86R538 KFF-F

By:  Metcalf H.B. No. 4562

A BILL TO BE ENTITLED

AN ACT

relating to parental administrations for certain incapacitated adults; authorizing a fee; creating a criminal offense.

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

ARTICLE 1. PARENTAL ADMINISTRATION

SECTION 1.01.  Section 1002.0015, Estates Code, is amended to read as follows:

Sec. 1002.0015.  ALTERNATIVES TO GUARDIANSHIP. "Alternatives to guardianship" includes the:

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

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

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

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

(5)  establishment of a joint bank account;

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

(7)  creation of a special needs trust;

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

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

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

SECTION 1.02.  Section 1002.002, Estates Code, is amended to read as follows:

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

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

(2)  a proposed incapacitated adult, as defined by Section 1359.0001, in a proceeding for a parental administration under Chapter 1359.

SECTION 1.03.  Subchapter A, Chapter 1202, Estates Code, is amended by adding Section 1202.004 to read as follows:

Sec. 1202.004.  TERMINATION OF GUARDIANSHIP OF THE PERSON ON CREATION OF PARENTAL ADMINISTRATION. (a) On the application of a parent, as defined by Section 1359.0001, a court with jurisdiction over a guardianship of the person may:

(1)  terminate the guardianship if the court finds that it is in the best interests of the ward to be treated as a proposed incapacitated adult under Chapter 1359; and

(2)  appoint a parental administrator of the incapacitated adult under that chapter.

(b)  The ward's legal and civil rights and powers are restored on termination of the guardianship and creation of a parental administration under this section.

SECTION 1.04.  Section 1002.013, Estates Code, is amended to read as follows:

Sec. 1002.013.  GUARDIAN AD LITEM. "Guardian ad litem" means a person appointed by a court to represent the best interests of an incapacitated person in a guardianship or parental administration proceeding.

SECTION 1.05.  Section 1002.017, Estates Code, is amended to read as follows:

Sec. 1002.017.  INCAPACITATED PERSON. "Incapacitated person" means:

(1)  a minor;

(2)  an adult who, because of a physical or mental condition, is substantially unable to:

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

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

(C)  manage the person's own financial affairs; or

(3)  a person who must have a guardian or parental administrator, as defined by Section 1359.0001, appointed for the person to receive funds due the person from a governmental source.

SECTION 1.06.  Subtitle I, Title 3, Estates Code, is amended by adding Chapter 1359 to read as follows:

CHAPTER 1359. PARENTAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1359.0001.  DEFINITIONS. (a) In this chapter:

(1)  "Incapacitated adult" means a person who is 18 years of age or older and who is an incapacitated person as that term is defined by Section 1002.017.

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

(3)  "Parental administrator" means a person appointed as a parental administrator under Section 1359.0108.

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

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

Sec. 1359.0002.  JURISDICTION AND VENUE. (a) Except as otherwise provided by this section, a proceeding for the appointment of a parental administrator must be brought in the county in which the proposed incapacitated adult resides or is located on the date the application is filed.

(b)  Subject to Subsection (d) or (e), if two or more courts have concurrent venue of a parental administration proceeding or if at least one court has venue of a guardianship proceeding and another court has venue of a parental administration proceeding respecting the same incapacitated adult or proposed incapacitated adult, the court in which an application for parental administration or guardianship, as applicable, is initially filed, has and retains venue over the proceeding.

(c)  If a parental administration proceeding is commenced in more than one county or if a parental administration proceeding is commenced in one county and a guardianship proceeding is commenced in another county respecting the same incapacitated adult or proposed incapacitated adult, the proceeding shall be stayed except in the county in which a proceeding was initially commenced until final determination of proper venue is made by the court in the county in which a proceeding was initially commenced. A proceeding is considered commenced by the filing of an application alleging facts sufficient to confer venue.

(d)  If a guardianship exists for a proposed incapacitated adult, the court in the county in which the guardianship is pending has jurisdiction and venue of the parental administration application to the exclusion of any other court.

(e)  Notwithstanding Sections 1023.001 and 1023.002, if a parental administration proceeding exists for a proposed ward, the court in the county in which the parental administration is pending has venue and jurisdiction of the guardianship proceeding to the exclusion of any other court.

Sec. 1359.0003.  TRANSFER OF PARENTAL ADMINISTRATION TO ANOTHER COUNTY. (a) When a parental administrator or any other person desires to transfer the parental administration from one county to another, the person shall file a written application in the court in which the parental administration is pending stating the reason for the transfer.

(b)  With notice as provided by Section 1359.0004, the court in which a parental administration is pending, on the court's own motion, may transfer the parental administration to another county if the incapacitated adult resides in the county to which the parental administration is to be transferred.

Sec. 1359.0004.  NOTICE. If an application is filed by a person other than the parental administrator or if a court made a motion to transfer a parental administration, the parental administrator shall be cited by personal service to appear and show cause why the parental administration should not be transferred.

Sec. 1359.0005.  COURT ACTION. On hearing of an application or motion under this subchapter, if good cause is not shown to deny the transfer and it appears that transfer of the parental administration is in the best interests of the incapacitated adult, the court shall enter an order authorizing the transfer on payment of all accrued costs of court.

Sec. 1359.0006.  PRO SE REPRESENTATION. Notwithstanding any other law, the applicant who files a parental administration application may appear pro se before the court in all parental administration proceedings.

SUBCHAPTER B. FILING AND RECORDKEEPING

Sec. 1359.0051.  RECORDKEEPING REQUIREMENTS. (a) The county clerk shall maintain a record book titled "Judge's Parental Administration Docket" and shall record in the book:

(1)  the name of each person with respect to whom a proceeding is commenced or sought to be commenced;

(2)  the name of the parental administrator or of each applicant for parental administration;

(3)  the date each original application for a parental administration proceeding is filed;

(4)  a notation of each order, judgment, decree, and proceeding that occurs in each parental administration, including the date it occurs; and

(5)  the docket number of each parental administration as assigned under Subsection (b).

(b)  The county clerk shall assign a docket number to each parental administration in the order a proceeding is commenced.

(c)  The county clerk shall maintain a record book titled "Parental Administration Fee Book" and shall record in the book each item of cost that accrues to the officers of the court and any witness fees. Each record entry must include:

(1)  the party to whom the cost or fee is due;

(2)  the date the cost or fee accrued;

(3)  the party liable for the cost or fee; and

(4)  the date the cost or fee is paid.

Sec. 1359.0052.  ALTERNATE RECORDKEEPING. Instead of maintaining the record books described by Section 1359.0051, the county clerk may maintain the information described by that section relating to a person's parental administration proceeding:

(1)  on a computer file;

(2)  on microfilm;

(3)  in the form of a digitized optical image; or

(4)  in another similar form of data compilation.

Sec. 1359.0053.  FILING PROCEDURES. (a) An application for a parental administration proceeding or a complaint, petition, or other paper permitted or required by law to be filed with a court in a parental administration proceeding must be filed with the county clerk of the appropriate county.

(b)  Each paper filed in a parental administration proceeding must be given the docket number assigned to the parental administration.

(c)  On receipt of a paper described by Subsection (a), the county clerk shall:

(1)  file the paper; and

(2)  endorse on the paper:

(A)  the date the paper is filed;

(B)  the docket number; and

(C)  the clerk's official signature.

Sec. 1359.0054.  CASE FILES. (a) The county clerk shall maintain a case file for each person's filed parental administration proceeding.

(b)  Each case file must contain each order, judgment, decree, and proceeding of the court and any other parental administration filing with the court, including each:

(1)  application for the granting of parental administration;

(2)  citation and notice, whether published or posted, including the return on the citation or notice;

(3)  exhibit; and

(4)  report.

Sec. 1359.0055.  INDEX. (a) The county clerk shall properly index the records required under this chapter.

(b)  The county clerk shall keep the index open for public inspection but may not release the index from the clerk's custody.

SUBCHAPTER C. APPOINTMENT OF PARENTAL ADMINISTRATOR

Sec. 1359.0101.  PARENTAL ADMINISTRATOR. One or both parents of a proposed incapacitated adult may in accordance with this chapter seek appointment as a parental administrator of that adult with the rights and duties granted under this chapter.

Sec. 1359.0102.  APPLICATION. (a) One or both parents of a proposed incapacitated adult may commence a proceeding for the appointment of a parental administrator by filing a written application in a court having jurisdiction and venue.

(b)  Subject to Section 1359.0103, the application must be sworn to by the applicant and must state:

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

(2)  the name, relationship, and address of the applicant seeking to be appointed as parental administrator;

(3)  a description of the nature of the proposed incapacitated adult's alleged incapacity;

(4)  whether the proposed incapacitated adult is totally or partially without capacity to care for himself or herself;

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

(6)  the nature and description of any existing guardianship of the proposed incapacitated adult;

(7)  whether the proposed incapacitated adult was the subject of a guardianship proceeding and, if so, the name of the guardian;

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

(9)  the names of the proposed incapacitated adult's other parent if that parent is not an applicant and that parent's address or a statement that the parent is deceased;

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

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

Sec. 1359.0103.  CONFIDENTIALITY OF CERTAIN ADDRESSES. An application filed under Section 1359.0102 or 1359.0552 may omit the address of a person named in the application if:

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

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

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

(4)  the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and

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

Sec. 1359.0104.  SERVICE AND NOTICE. (a) The citation and the application filed under this chapter shall be personally served on the proposed incapacitated adult by a sheriff, a constable, or a process server certified under Chapter 156, Government Code.

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

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

(2)  each other person named under Section 1359.0102(b)(8), (9), or (10).

(c)  The applicant shall file with the court:

(1)  a copy of any notice required by Subsection (b) and the proof of delivery of the notice; and

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

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

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

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

Sec. 1359.0105.  CHANGE OR RESIGNATION OF RESIDENT AGENT. A resident agent for a parental administrator may be declared or changed or may resign in the same manner as a resident agent for a guardian under Chapter 1057.

Sec. 1359.0106.  SUBMISSION OF CRIMINAL HISTORY RECORD INFORMATION BY PROPOSED PARENTAL ADMINISTRATOR. (a) Not later than the 10th day before the date of the hearing to appoint a parental administrator, the applicant shall submit to the clerk a copy of the person's criminal history record information that the person obtains not earlier than the 30th day before the date of the hearing from:

(1)  the Department of Public Safety; or

(2)  the Federal Bureau of Investigation.

(b)  Criminal history record information obtained or provided under this section is privileged and confidential and is for the exclusive use of the court. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated.

(c)  The court shall use the information obtained under this section only in determining whether to appoint the applicant to serve as a parental administrator.

(d)  The county clerk may destroy the criminal history record information after the information is used for the purposes authorized by this section.

Sec. 1359.0107.  GROUNDS FOR DISQUALIFICATION. A person may not be appointed or act as a parental administrator if the person:

(1)  is a minor or other incapacitated person;

(2)  is incapable of properly and prudently managing and controlling the proposed incapacitated adult because of inexperience, lack of education, or other good reason;

(3)  is found by the court to be unsuitable;

(4)  has engaged in conduct that is notoriously bad, including having been finally convicted of:

(A)  any sexual offense, including sexual assault, aggravated sexual assault, and prohibited sexual conduct;

(B)  aggravated assault;

(C)  injury to a child, elderly individual, or individual with a disability;

(D)  abandoning or endangering a child;

(E)  terroristic threat; or

(F)  continuous violence against the family of the proposed incapacitated adult;

(5)  is a party or the child of a parent who is a party to a suit concerning or affecting the welfare of the proposed incapacitated adult, unless the court:

(A)  determines that the claim of the person who has applied to be appointed parental administrator is not in conflict with the claim of the proposed incapacitated adult; or

(B)  appoints a guardian ad litem to represent the interests of the proposed incapacitated adult while the suit is pending;

(6)  is indebted to the proposed incapacitated adult, unless the person pays the debt before appointment;

(7)  asserts a claim adverse to the proposed incapacitated adult or the proposed incapacitated adult's property;

(8)  is disqualified in a written and signed declaration made by the proposed incapacitated adult at a time during which the proposed incapacitated adult had capacity; or

(9)  is a nonresident who has failed to file with the court the name of a resident agent to accept service of process in all actions or proceedings relating to the parental administration.

Sec. 1359.0108.  ORDER APPOINTING PARENTAL ADMINISTRATOR. (a) If it is found that the proposed incapacitated adult lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint one or more parental administrators. The court may, subject to Section 1359.0401, assign the parental administrator only those powers and duties necessary to promote and protect the well-being of the incapacitated adult.

(b)  The order appointing a parental administrator must:

(1)  specify the specific powers, limitations, and duties of the parental administrator, which may include:

(A)  the right to have physical possession of the incapacitated adult and to establish the incapacitated adult's legal domicile;

(B)  the duty to provide care, supervision, and protection for the incapacitated adult;

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

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

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

(F)  the power to sign documents necessary or appropriate to facilitate employment of the incapacitated adult;

(G)  the power to receive funds for the incapacitated adult from a government source;

(H)  the power to obtain insurance and communicate with insurance issuers on behalf of the incapacitated adult;

(I)  the power to file suit on behalf of the incapacitated adult; and

(J)  other powers as determined necessary by the court;

(2)  specify that the specific powers, limitations, and duties of the parental administrator are subordinate to the rights and powers of the incapacitated adult;

(3)  state the name of each parent appointed;

(4)  state the name of the incapacitated adult; and

(5)  if in response to an application filed under Section 1202.004, terminate the existing guardianship of the incapacitated adult.

(c)  If the order appointing a parental administrator under this section includes the right of the parental administrator to have physical possession of the incapacitated adult or to establish the incapacitated adult's legal domicile, the order must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A PARENTAL ADMINISTRATOR OF AN INCAPACITATED ADULT TO HAVE PHYSICAL POSSESSION OF THE INCAPACITATED ADULT OR TO ESTABLISH THE INCAPACITATED ADULT'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER UNLESS OBJECTED TO BY THE INCAPACITATED ADULT. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED PARENTAL ADMINISTRATOR OF THE INCAPACITATED ADULT. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

(d)  The order appointing the parental administrator may not:

(1)  remove the rights of the incapacitated adult; or

(2)  grant a power related to an incapacitated adult's right to manage his or her property or financial affairs beyond the powers specifically authorized under Subsection (b).

Sec. 1359.0109.  POWERS AND DUTIES OF PARENTAL ADMINISTRATOR APPOINTED AS NECESSARY FOR INCAPACITATED ADULT TO RECEIVE GOVERNMENT FUNDS. (a) A parental administrator appointed to receive funds from a governmental source may:

(1)  administer only:

(A)  the funds received from the governmental source;

(B)  all earnings, interest, or profits derived from the funds; and

(C)  all property acquired with the funds; and

(2)  receive the funds and pay the expenses for the support, maintenance, or education of the incapacitated adult or the incapacitated adult's dependents.

(b)  Expenditures under Subsection (a)(2) for the support, maintenance, or education of the incapacitated adult or the incapacitated adult's dependents may not exceed $12,000 during any 12-month period without the court's approval.

Sec. 1359.0110.  AUTHORITY AND TREATMENT OF CERTAIN PARENTAL ADMINISTRATORS AS GUARDIAN UNDER LAW. If the order appointing a parental administrator under Section 1359.0108 includes the right of the parental administrator to have physical possession of the incapacitated adult or to establish the incapacitated adult's legal domicile, to the extent not in conflict with this chapter, including Section 1359.0401, a parental administrator has the same authority and is entitled to the same treatment respecting the incapacitated adult as a guardian of the person respecting a ward under law.

Sec. 1359.0111.  DISMISSAL OF APPLICATION. If it is found that a proposed incapacitated adult possesses the capacity to care for himself or herself and manage his or her property as would a reasonably prudent person, the court shall dismiss an application for parental administration.

SUBCHAPTER D. ATTORNEYS AD LITEM AND INTERPRETERS

Sec. 1359.0151.  APPOINTMENT OF ATTORNEY AD LITEM IN PROCEEDING FOR APPOINTMENT OF PARENTAL ADMINISTRATOR. (a) In a proceeding for the appointment of a parental administrator, the court shall appoint an attorney ad litem to represent the proposed incapacitated adult's interests.

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

(c)  Unless the court determines that the continued appointment of an attorney ad litem appointed under this subchapter is in the proposed incapacitated adult's best interests, the attorney's term of appointment expires, without a court order, on the date the court appoints a parental administrator or denies the application for appointment of a parental administrator.

Sec. 1359.0152.  ACCESS TO RECORDS. An attorney ad litem appointed under this subchapter:

(1)  shall be provided copies of all of the current records in the parental administration case; and

(2)  may have access to all of the proposed incapacitated adult's relevant medical, psychological, and intellectual testing records.

Sec. 1359.0153.  DUTIES. (a) An attorney ad litem appointed under this subchapter shall interview the proposed incapacitated adult within a reasonable time before the hearing in the proceeding for the appointment of a parental administrator. To the greatest extent possible, the attorney shall discuss with the proposed incapacitated adult:

(1)  the law and facts of the case;

(2)  the proposed incapacitated adult's legal options regarding disposition of the case;

(3)  the grounds on which parental administration is sought; and

(4)  whether other less restrictive alternatives to guardianship, other than parental administration, would meet the needs of the proposed incapacitated adult and avoid the need for the appointment of a parental administrator.

(b)  Before the hearing, the attorney ad litem shall review:

(1)  the application for parental administration;

(2)  certificates of current physical, medical, and intellectual examinations; and

(3)  all of the proposed incapacitated adult's relevant medical, psychological, and intellectual testing records.

(c)  Before the hearing, the attorney ad litem shall discuss with the proposed incapacitated adult the attorney ad litem's opinion regarding:

(1)  whether a parental administration is necessary for the proposed incapacitated adult; and

(2)  if a parental administration is necessary, the specific powers or duties of the parental administration that should be limited if the proposed incapacitated adult receives supports and services.

Sec. 1359.0154.  COMPENSATION AND EXPENSES. An attorney ad litem appointed under this subchapter is entitled to reasonable compensation for services and expenses provided in the amount set by the court, to be taxed as costs in the proceeding.

Sec. 1359.0155.  APPOINTMENT OF INTERPRETER. At the time the court appoints the attorney ad litem under this subchapter, the court shall appoint a language interpreter or sign interpreter if necessary to ensure effective communication between the proposed incapacitated adult and the attorney ad litem.

Sec. 1359.0156.  APPOINTMENT OF EXISTING AD LITEM. In the interest of judicial economy, the court may appoint as an attorney ad litem under this subchapter a person who is serving as an ad litem for the proposed incapacitated adult's benefit in any other proceeding.

SUBCHAPTER E. GUARDIANS AD LITEM

Sec. 1359.0201.  APPOINTMENT OF GUARDIAN AD LITEM IN PARENTAL ADMINISTRATION PROCEEDING. (a) The judge may appoint a guardian ad litem to represent the interests of a proposed incapacitated adult in a parental administration proceeding.

(b)  A guardian ad litem must have the certification required by Section 1054.201.

Sec. 1359.0202.  APPOINTMENT OF EXISTING AD LITEM. In the interest of judicial economy, the court may appoint as guardian ad litem under this subchapter a person who is serving as an ad litem for the proposed incapacitated adult's benefit in any other proceeding.

Sec. 1359.0203.  TERM OF CERTAIN APPOINTMENTS. Unless the court determines that the continued appointment of a guardian ad litem appointed under this subchapter is in the proposed incapacitated adult's best interests, the guardian ad litem's term of appointment expires, without a court order, on the date the court appoints a parental administrator or denies the application for appointment of a parental administrator.

Sec. 1359.0204.  DUTIES. (a) A guardian ad litem appointed under this subchapter is an officer of the court.

(b)  A guardian ad litem shall protect the proposed incapacitated adult whose interests the guardian has been appointed to represent in a manner that will enable the court to determine the action that will be in that person's best interests.

(c)  The guardian ad litem shall:

(1)  investigate whether a parental administration is necessary for the proposed incapacitated adult; and

(2)  evaluate alternatives and supports and services available to the proposed incapacitated adult that would avoid the need for appointment of a parental administrator.

(d)  The information gathered by the guardian ad litem under Subsection (c) is subject to examination by the court.

Sec. 1359.0205.  COMPENSATION AND EXPENSES. (a) A guardian ad litem appointed under this subchapter is entitled to reasonable compensation for services and expenses provided in the amount set by the court, to be taxed as costs in the proceeding.

(b)  The fees and expenses of a guardian ad litem appointed under this subchapter are costs of the litigation proceeding that made the appointment necessary.

Sec. 1359.0206.  IMMUNITY. (a) Subject to Subsection (b), a guardian ad litem appointed under this subchapter to represent the interests of a proposed incapacitated adult is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.

(b)  This section does not apply to a recommendation or opinion that is:

(1)  wilfully wrongful;

(2)  given:

(A)  with conscious indifference to or reckless disregard for the safety of another;

(B)  with malice; or

(C)  in bad faith; or

(3)  grossly negligent.

SUBCHAPTER F. COURT INVESTIGATION

Sec. 1359.0251.  INVESTIGATION OF PARENTAL ADMINISTRATION APPLICATION. On the filing of an application for parental administration under this chapter, a court investigator shall investigate the circumstances alleged in the application to determine whether any other less restrictive alternative to guardianship other than parental administration is appropriate.

Sec. 1359.0252.  GENERAL DUTIES OF COURT INVESTIGATOR. A court investigator shall:

(1)  investigate a complaint received from any person about a parental administration and report to the judge, if necessary; and

(2)  perform other duties as assigned by the judge or required by this title.

Sec. 1359.0253.  INVESTIGATION REPORT. (a) A court investigator shall file with the court a report containing the court investigator's findings and conclusions after conducting an investigation under this subchapter.

(b)  In a contested case, the court investigator shall provide copies of the report of the court investigator's findings and conclusions to the attorneys for the parties before the earlier of:

(1)  the seventh day after the date the court investigator completes the report; or

(2)  the 10th day before the date the trial is scheduled to begin.

(c)  Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Evidence.

Sec. 1359.0254.  EFFECT OF SUBCHAPTER ON OTHER LAW. Nothing in this subchapter supersedes any duty or obligation of another to report or investigate abuse or neglect under any statute of this state.

SUBCHAPTER G. HEARING; JURY TRIAL

Sec. 1359.0301.  HEARING. (a) At a hearing for the appointment of a parental administrator, the court shall inquire into:

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

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

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

(C)  manage his or her property or financial affairs; and

(2)  whether the applicant is the parent of the proposed incapacitated adult.

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

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

Sec. 1359.0302.  JURY TRIAL. A proposed incapacitated adult is entitled to a jury trial on timely request.

Sec. 1359.0303.  USE OF RECORDS. Current medical, psychological, and intellectual testing records are a sufficient basis for an appointment of a parental administrator, but the findings and recommendations contained in those records are not binding on the court.

SUBCHAPTER H. DETERMINATION OF NECESSITY OF PARENTAL ADMINISTRATION; FINDINGS AND PROOF

Sec. 1359.0351.  FINDINGS AND PROOF REQUIRED. (a) Before appointing a parental administrator for a proposed incapacitated adult, the court must find by a preponderance of the evidence that:

(1)  the proposed incapacitated adult is an incapacitated person as defined by Section 22.016(2);

(2)  the person to be appointed parental administrator is not disqualified from acting and is suitable to act as parental administrator;

(3)  a necessity exists for the parental administration;

(4)  it is in the proposed incapacitated adult's best interests to have the court appoint a parental administrator;

(5)  other less restrictive alternatives to guardianship, other than parental administration, that would avoid the need for the appointment of a parental administrator have been considered and determined not to be feasible;

(6)  supports and services available to the proposed incapacitated adult that would avoid the need for the appointment of a parental administrator have been considered and determined not to be feasible;

(7)  it is in the best interests of the incapacitated adult to have more than one parental administrator if more than one parent has made application; and

(8)  the court has venue of the case.

(b)  The court may not grant an application to create a parental administration unless the applicant proves each element required by this section.

Sec. 1359.0352.  DETERMINATION OF INCAPACITY: PHYSICIAN EXAMINATION. (a) The court may not grant an application for the appointment of a parental administrator for a proposed incapacitated adult unless the applicant presents to the court:

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

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

(B)  is based on an examination the physician performed not earlier than the 120th day before the date the application is filed; and

(C)  complies with Subsection (b); or

(2)  a written letter or certificate that:

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

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

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

(B)  complies with Subsection (b).

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

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

(2)  provide an evaluation of the proposed incapacitated adult's physical condition and mental functioning and summarize the proposed incapacitated adult's medical history if reasonably available;

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

(A)  understand or communicate;

(B)  recognize familiar objects and individuals;

(C)  solve problems;

(D)  reason logically; and

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

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

(5)  if applicable, describe the precise physical and mental conditions underlying a diagnosis of an intellectual disability;

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

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

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

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

SUBCHAPTER I. RIGHTS, POWERS, AND DUTIES UNDER PARENTAL ADMINISTRATION

Sec. 1359.0401.  RIGHTS RETAINED BY INCAPACITATED ADULT. (a) An incapacitated adult for whom a parental administrator is appointed retains all legal and civil rights and powers.

(b)  The powers, limitations, and duties of a parental administrator appointed under this chapter are subordinate to the rights and powers of the incapacitated adult.

Sec. 1359.0402.  FIDUCIARY DUTY. A parental administrator owes a fiduciary duty to the incapacitated adult.

Sec. 1359.0403.  COMMITMENT OF INCAPACITATED ADULT. (a) Except as provided by Subsection (b), a parental administrator may not voluntarily admit an incapacitated adult to a public or private inpatient psychiatric facility operated by the Health and Human Services Commission for care and treatment or to a residential facility operated by the commission for care and treatment. If care and treatment in a psychiatric or residential facility is necessary, the incapacitated adult or the parental administrator may:

(1)  apply for services under Section 593.027 or 593.028, Health and Safety Code;

(2)  apply to a court to commit the incapacitated adult under Subtitle C or D, Title 7, Health and Safety Code, or Chapter 462, Health and Safety Code; or

(3)  transport the incapacitated adult to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

(b)  A parental administrator may voluntarily admit an incapacitated adult to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code, if the order appointing the parental administrator grants the parental administrator the duty to provide the incapacitated adult with medical care.

Sec. 1359.0404.  ADMINISTRATION OF MEDICATION. (a) In this section, "psychoactive medication" has the meaning assigned by Section 574.101, Health and Safety Code.

(b)  A parental administrator of an incapacitated adult who is under a protective custody order as provided by Subchapter B, Chapter 574, Health and Safety Code, may consent to the administration of psychoactive medication as prescribed by the incapacitated adult's treating physician regardless of the incapacitated adult's expressed preferences regarding treatment with psychoactive medication, if the order appointing the parental administrator grants the parental administrator the duty to provide the incapacitated adult with medical care.

Sec. 1359.0405.  APPLICATION BY CERTAIN RELATIVES FOR ACCESS TO INCAPACITATED ADULT; HEARING AND COURT ORDER. A relative of an incapacitated adult may file an application with the court requesting access to the incapacitated adult, including the opportunity to establish visitation or communication with the incapacitated adult in the same manner as a ward's relative may file such an application under Section 1151.055. The court shall act on the application in the same manner as the court is required to act on the application for a ward under that section.

SUBCHAPTER J. REPORTING

Sec. 1359.0451.  REPORT OF PARENTAL ADMINISTRATOR. At any time after a parental administrator is appointed, the court, on its own motion or on the motion of a person interested in the welfare of the incapacitated adult and for good cause shown, may order the parental administrator to submit to the court a sworn report on the condition of the incapacitated adult. The report must include the same information for the incapacitated adult as is required by Section 1163.101 for a ward.

SUBCHAPTER K. INVESTIGATION OF ALLEGED ABUSE, NEGLECT, OR EXPLOITATION CONCERNING INCAPACITATED ADULT

Sec. 1359.0501.  INTERFERENCE WITH INVESTIGATION OR SERVICES PROHIBITED. A parental administrator may not interfere with:

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

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

Sec. 1359.0502.  REPORT TO COURT OF INVESTIGATION OF ALLEGED ABUSE, NEGLECT, OR EXPLOITATION. Subject to rules adopted under Section 48.101, Human Resources Code, the Department of Family and Protective Services or another state agency that conducts an investigation of alleged abuse, neglect, or exploitation of an incapacitated adult for whom a parental administrator is appointed shall report the results of the investigation to the court with jurisdiction of the parental administration.

SUBCHAPTER L. RESIGNATION, REMOVAL, OR DEATH OF PARENTAL ADMINISTRATOR; CONVERSION TO GUARDIANSHIP

Sec. 1359.0551.  GROUNDS FOR REMOVAL OF PARENTAL ADMINISTRATOR. A court may remove a parental administrator if the parental administrator:

(1)  fails to comply with a court order for a report under Section 1359.0451;

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

(3)  is disqualified to act as a parental administrator under Section 1359.0107;

(4)  is no longer necessary because the court finds that the incapacitated adult is no longer incapacitated;

(5)  is convicted of an offense and subsequently confined or imprisoned; or

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

Sec. 1359.0552.  DETERMINATION REGARDING PARENTAL ADMINISTRATOR'S INCAPACITY. (a) The court on its own motion may or on the written application of an interested person shall order an investigation into whether a parental administrator appointed by the court under this chapter is an incapacitated person for purposes of Sections 1359.0551(3) and 1359.0107(1).

(b)  Subject to Section 1359.0103, an application filed under this section must be sworn to by the applicant and state:

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

(2)  the parental administrator's name, sex, date of birth, and address;

(3)  the nature and degree of the parental administrator's alleged incapacity;

(4)  the facts requiring an investigation into the parental administrator's capacity; and

(5)  the applicant's interest in the incapacitated adult.

(c)  The court on its own motion may or on receipt of an application under this section shall appoint a guardian ad litem or court investigator to investigate the conditions and circumstances of the parental administrator, including any facts alleged in the application that would give rise to a finding of incapacity, to determine whether there is probable cause to believe the parental administrator is an incapacitated person. The court's order appointing the guardian ad litem or court investigator must include a statement that the parental administrator has the right to petition the court to have the appointment set aside.

(d)  The guardian ad litem or court investigator shall file with the court a report of the findings and conclusions of the investigation conducted under Subsection (c).

(e)  If a guardian ad litem or court investigator, after an investigation as prescribed by this section, determines that probable cause exists to believe the parental administrator is an incapacitated person, the guardian ad litem or court investigator, as applicable, shall file with the court an application recommending an independent examination of the parental administrator's capacity by a physician licensed in this state.

(f)  If the court determines it is necessary, the court may appoint one or more physicians licensed in this state to examine the parental administrator. The court must make its determination with respect to the necessity for a physician's examination of the parental administrator at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the court shall give to the parental administrator written notice specifying the purpose, date, and time of the hearing.

(g)  A physician who examines the parental administrator under this section shall return to the court a written letter or certificate from the physician that describes the nature, degree, and severity of the parental administrator's incapacity, if any, including any functional deficits regarding the parental administrator's ability to perform the duties the parental administrator owes to the incapacitated adult. A written letter or certificate by a physician finding incapacity under this subsection may be relied on by the court only for purposes of making a determination of incapacity under Sections 1359.0551(3) and 1359.0107(1).

(h)  Notwithstanding Section 1359.0603 and except as provided by Subsection (i), the court may order court costs associated with making a determination relating to incapacity under this section to be paid by the applicant who requested the investigation under this section if:

(1)  the parental administrator is determined not to be an incapacitated person; and

(2)  the incapacitated adult has no guardianship estate or management trust or the assets of the estate or management trust, as appropriate, are insufficient to pay the court costs.

(i)  If the applicant ordered to pay court costs under Subsection (h) files, on the applicant's own behalf, an affidavit of inability to pay court costs under Rule 145, Texas Rules of Civil Procedure, that shows the applicant is unable to afford the costs, the court shall order costs be paid out of the county treasury.

Sec. 1359.0553.  PROCEDURE FOR REMOVAL OF PARENTAL ADMINISTRATOR OR CONVERSION OF PARENTAL ADMINISTRATION TO GUARDIANSHIP. (a) The court on the court's own motion or on the application of any person may initiate a proceeding to:

(1)  subject to Subsection (b), remove a parental administrator on proof of a ground for removal described by Section 1359.0551; or

(2)  subject to Subsection (d), convert a parental administration for an incapacitated adult to a guardianship.

(b)  In a proceeding for the removal of a parental administrator initiated under Subsection (a)(1), the court shall:

(1)  have the parental administrator cited by personal service to appear before the court; and

(2)  appoint to represent the proposed incapacitated adult's interests an attorney ad litem who has the certification required by Section 1054.201.

(c)  A citation under this section must state:

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

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

(d)  In a proceeding for the conversion of a parental administration to a guardianship under Subsection (a)(2), notwithstanding any other law, all requirements necessary to create a guardianship are required to convert a parental administration to a guardianship, except:

(1)  a procedural requirement the court determines was fulfilled when the parental administration was initially established; and

(2)  a requirement for a written letter or certificate from a physician licensed in this state.

(e)  Notwithstanding the discretion provided by Subsection (d), the court shall:

(1)  provide notice of the conversion of a parental administration to a guardianship in the manner required by Chapter 1051; and

(2)  appoint to represent the proposed incapacitated adult's interests an attorney ad litem who has the certification required by Section 1054.201.

(f)  The authority to appear pro se in a parental administration proceeding does not extend to a proceeding to convert a parental administration to a guardianship.

Sec. 1359.0554.  INFORMAL REQUEST FOR ORDER BY INCAPACITATED ADULT; INVESTIGATION AND REPORT. (a) Subject to Subsection (e), an incapacitated adult may request by informal letter to the court an order under Section 1359.0551(4) finding that the incapacitated adult is no longer incapacitated. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(b)  On receipt of an informal letter under Subsection (a), the court shall appoint the court investigator or a guardian ad litem to investigate the incapacitated adult's circumstances, including any circumstances alleged in the letter, to determine whether:

(1)  the incapacitated adult is no longer incapacitated; or

(2)  a modification of the parental administration is necessary.

(c)  The guardian ad litem or court investigator shall file with the court a report of the investigation's findings and conclusions. If the guardian ad litem or court investigator determines that it is in the best interests of the incapacitated adult to terminate or modify the parental administration, the guardian ad litem or court investigator shall file an application on the incapacitated adult's behalf.

(d)  A guardian ad litem appointed under this section may also be appointed by the court to serve as attorney ad litem under Section 1359.0553.

(e)  A person may not reapply for termination or modification of the parental administration before the first anniversary of the date of the hearing on the last preceding application, except as otherwise provided by the court on good cause shown by the applicant.

Sec. 1359.0555.  TERMINATION OF PARENTAL ADMINISTRATOR'S RIGHTS AND POWERS ON REMOVAL OR CONVERSION TO GUARDIANSHIP. The rights and powers of a parental administrator terminate when a court orders the parental administrator removed or a parental administration converted into a guardianship.

Sec. 1359.0556.  APPOINTMENT BECAUSE OF RESIGNATION, REMOVAL, OR DEATH. (a) Except as provided by Subsection (b), if a parental administrator resigns, is removed, or dies, the court may appoint a successor parental administrator on application and on service of notice as directed by the court.

(b)  The court may appoint a successor parental administrator under this section without citation or notice if the court finds that a necessity exists for the immediate appointment. Subject to an order of the court, a successor parental administrator has the same rights and powers previously granted to the former parental administrator.

SUBCHAPTER M. COMPENSATION, EXPENSES, AND COURT COSTS

Sec. 1359.0601.  COMPENSATION FOR CERTAIN PARENTAL ADMINISTRATORS. The court may authorize compensation for a parental administrator from available funds of the incapacitated adult's estate or other funds available for that purpose. The court may set the compensation in an amount not to exceed five percent of the incapacitated adult's gross income. For purposes of this section, "gross income" does not include United States Department of Veterans Affairs or social security benefits received by an incapacitated adult.

Sec. 1359.0602.  EXPENSES. A parental administrator is entitled to reimbursement of expenses to the same extent as a guardian is entitled to reimbursement of expenses under Subchapter C, Chapter 1155.

Sec. 1359.0603.  COSTS IN PARENTAL ADMINISTRATION PROCEEDING GENERALLY. (a) In a parental administration proceeding, the court costs of the proceeding, including the costs described by Subsection (b), shall, except as provided by Subsection (c), be paid as follows, and the court shall issue the judgment accordingly:

(1)  out of the incapacitated adult's estate, if any;

(2)  out of the management trust, if a management trust has been created for the benefit of the incapacitated adult under Chapter 1301 and the court determines it is in the incapacitated adult's best interests;

(3)  by the party to the proceeding who incurred the costs, unless that party filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs, if:

(A)  the incapacitated adult has no estate or no management trust has been created for the incapacitated adult's benefit; or

(B)  the assets of the incapacitated adult's estate or management trust, as appropriate, are insufficient to pay the costs; or

(4)  out of the county treasury if:

(A)  the incapacitated adult has no estate or management trust or the assets of the incapacitated adult's estate or management trust, as appropriate, are insufficient to pay the costs; and

(B)  the party to the proceeding who incurred the costs filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs.

(b)  In a parental administration proceeding, the cost of any guardians ad litem, attorneys ad litem, health professionals, and interpreters appointed under this chapter shall be set in an amount the court considers equitable and just.

(c)  Notwithstanding any other law requiring the payment of court costs in a parental administration proceeding, the following are not required to pay court costs on the filing of or during a parental administration proceeding:

(1)  an attorney ad litem;

(2)  a guardian ad litem;

(3)  a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the person or entity is unable to afford the costs; and

(4)  a governmental entity.

(d)  For purposes of Subsections (a) and (c), a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, is unable to afford the costs if the affidavit shows that the person or entity:

(1)  is currently receiving assistance or other benefits from a government program under which assistance or other benefits are provided to individuals on a means-tested basis;

(2)  is eligible for and currently receiving free legal services in the parental administration proceeding through the following:

(A)  a legal services provider funded partly by the Texas Access to Justice Foundation;

(B)  a legal services provider funded partly by the Legal Services Corporation; or

(C)  a nonprofit corporation formed under the laws of this state that provides legal services to low-income individuals whose household income is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services;

(3)  applied and was eligible for free legal services through a person or entity listed in Subdivision (2) but was declined representation; or

(4)  has a household income that is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services and has money or other available assets, excluding any homestead and exempt property under Chapter 42, Property Code, in an amount that does not exceed $2,000.

(e)  If an affidavit of inability to pay costs filed under Rule 145, Texas Rules of Civil Procedure, is contested, the court, at a hearing, shall review the contents of and attachments to the affidavit and any other evidence offered at the hearing and make a determination as to whether the person or entity is unable to afford the costs. If the court finds that the person or entity is able to afford the costs, the person or entity must pay the court costs. Except with leave of court, no further action in the parental administration proceeding may be taken by a person or entity found able to afford costs until payment of those costs is made.

(f)  The costs attributable to the services of a person described by Subsection (b) shall be paid under this section at any time after the commencement of the proceeding as ordered by the court.

(g)  If the court finds that a party in a parental administration proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may order the party to pay all or part of the costs of the proceeding.

(h)  If the incapacitated adult has an estate or a management trust under Chapter 1301 is created, a person or entity who paid any costs on the filing of or during the proceeding is entitled to be reimbursed out of assets of the incapacitated adult's estate or management trust, as appropriate, for the costs if:

(1)  the assets of the estate or trust, as appropriate, are sufficient to cover the reimbursement of the costs; and

(2)  the person or entity has not been ordered by the court to pay the costs as all or part of the payment of court costs under Subsection (g).

(i)  If at any time after a parental administration or management trust under Chapter 1301 is created there are sufficient assets of the estate or trust, as appropriate, to pay the amount of any of the costs exempt from payment under Subsection (c), the court shall require the parental administrator to pay out of the parental administration or management trust, as appropriate, to the court clerk for deposit in the county treasury the amount of any of those costs.

(j)  To the extent that this section conflicts with the Texas Rules of Civil Procedure or other rules, this section controls.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01.  Article 14.055, Code of Criminal Procedure, is amended to read as follows:

Art. 14.055.  DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a) In this article:

(1)  "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(2)  "Incapacitated adult" has the meaning assigned by Section 1359.0001, Estates Code.

(3)  "Parental administrator" has the meaning assigned by Section 1359.0001, Estates Code.

(4)  "Ward"[~~, "ward"~~] has the meaning assigned by Section 22.033, Estates Code.

(b)  As soon as practicable, but not later than the first working day after the date a peace officer detains or arrests a person who is:

(1)  a ward, the peace officer or the person having custody of the ward shall notify the ward's guardian and the court having jurisdiction over the ward's guardianship of the ward's detention or arrest; or

(2)  an incapacitated adult for whom a parental administrator has been appointed, the peace officer or the person having custody of the incapacitated adult shall notify the incapacitated adult's parental administrator and the court having jurisdiction over the incapacitated adult's parental administration of the incapacitated adult's detention or arrest.

SECTION 2.02.  Article 15.171, Code of Criminal Procedure, is amended to read as follows:

Art. 15.171.  DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a) In this article:

(1)  "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(2)  "Incapacitated adult" has the meaning assigned by Section 1359.0001, Estates Code.

(3)  "Parental administrator" has the meaning assigned by Section 1359.0001, Estates Code.

(4)  "Ward"[~~, "ward"~~] has the meaning assigned by Section 22.033, Estates Code.

(b)  As soon as practicable, but not later than the first working day after the date a peace officer detains or arrests a person who is:

(1)  a ward, the peace officer or the person having custody of the ward shall notify the ward's guardian and the court having jurisdiction over the ward's guardianship of the ward's detention or arrest; or

(2)  an incapacitated adult for whom a parental administrator has been appointed, the peace officer or the person having custody of the incapacitated adult shall notify the incapacitated adult's parental administrator and the court having jurisdiction over the incapacitated adult's parental administration of the incapacitated adult's detention or arrest.

SECTION 2.03.  Article 26.041, Code of Criminal Procedure, is amended to read as follows:

Art. 26.041.  PROCEDURES RELATED TO GUARDIANSHIPS AND PARENTAL ADMINISTRATIONS. (a) In this article:

(1)  "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(2)  "Incapacitated adult" has the meaning assigned by Section 1359.0001, Estates Code.

(3)  "Letters of guardianship" means a certificate issued under Section 1106.001(a), Estates Code.

(4)  "Parental administrator" has the meaning assigned by Section 1359.0001, Estates Code.

(b)  A guardian who provides a court with letters of guardianship or a parental administrator who provides a court with an order of parental administration for a defendant may:

(1)  provide information relevant to the determination of indigence [~~indigency~~]; and

(2)  request that counsel be appointed in accordance with this chapter.

SECTION 2.04.  The heading to Chapter 155, Government Code, is amended to read as follows:

CHAPTER 155. DUTIES RESPECTING GUARDIANSHIP AND PARENTAL ADMINISTRATION

SECTION 2.05.  Section 155.001, Government Code, is amended by adding Subdivisions (4-a) and (5-a) to read as follows:

(4-a)  "Incapacitated adult" has the meaning assigned by Section 1359.0001, Estates Code.

(5-a)  "Parental administrator" has the meaning assigned by Section 1359.0001, Estates Code.

SECTION 2.06.  The heading to Subchapter D, Chapter 155, Government Code, as added by Chapter 313 (S.B. 1096), Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

SUBCHAPTER D. GUARDIANSHIP AND PARENTAL ADMINISTRATION REGISTRATION AND DATABASE

SECTION 2.07.  Section 155.151, Government Code, as added by Chapter 313 (S.B. 1096), Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

Sec. 155.151.  REGISTRATION OF GUARDIANSHIPS AND PARENTAL ADMINISTRATIONS. (a) The supreme court, after consulting with the office and the commission, shall by rule establish a mandatory registration program for guardianships and parental administrations under which all guardianships or parental administrations, as applicable, in this state shall be required to register with the commission.

(b)  In establishing rules under this section, the supreme court shall ensure courts with jurisdiction over a guardianship or parental administration, as applicable, immediately notify the commission of the removal of a guardian or parental administrator.

SECTION 2.08.  Section 155.152, Government Code, as added by Chapter 313 (S.B. 1096), Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

Sec. 155.152.  GUARDIANSHIP AND PARENTAL ADMINISTRATION DATABASE. In cooperation with the commission and courts with jurisdiction over guardianship or parental administration proceedings and by using the information obtained by the commission under this subchapter, the office shall establish and maintain a central database of all guardianships and parental administrations subject to the jurisdiction of this state.

SECTION 2.09.  Section 155.153(c), Government Code, as added by Chapter 313 (S.B. 1096), Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

(c)  The only information that may be disclosed from the database to a law enforcement official inquiring into a guardianship or parental administration is:

(1)  the name, sex, and date of birth of a ward or incapacitated adult, as applicable;

(2)  the name, telephone number, and address of the guardian of a ward or the parental administrator of an incapacitated adult, as applicable; and

(3)  the name of the court with jurisdiction over the guardianship or parental administration, as applicable, proceeding.

SECTION 2.10.  Section 155.154, Government Code, as added by Chapter 313 (S.B. 1096), Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

Sec. 155.154.  DATABASE DISCLAIMER. To the extent feasible, the following disclaimer shall be displayed when the database is accessed: "This database is for the limited purpose of determining whether an individual has a guardian or parental administrator and obtaining a guardian's or parental administrator's contact information. The scope of a guardian's or parental administrator's authority is determined by court order, and a guardian or parental administrator should not be presumed to have the authority to act for or on behalf of a ward or incapacitated adult until the extent of the guardian's or parental administrator's authority is verified by the court with jurisdiction over the guardianship or parental administration."

SECTION 2.11.  Section 155.155(a), Government Code, is amended to read as follows:

(a)  Information that is contained in the database required under Section 155.152, including personally identifying information of a guardian, [~~or a~~] ward, incapacitated adult, or parental administrator is confidential and not subject to disclosure under Chapter 552 or any other law.

SECTION 2.12.  Section 313.004(f), Health and Safety Code, is amended to read as follows:

(f)  A person who is an available adult surrogate, as described by Subsection (a), may consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. At the conclusion of the period, a successor surrogate may not be appointed and only the following persons may consent to medical treatment:

(1)  the patient;

(2)  [~~or~~] the patient's appointed guardian of the person, if the patient is a ward under Title 3, Estates Code; or

(3)  the patient's parental administrator appointed under Chapter 1359, Estates Code, if the order appointing the parental administrator grants the parental administrator the duty to provide the incapacitated adult with medical care[~~, may consent to medical treatment~~].

SECTION 2.13.  Section 48.211, Human Resources Code, is amended to read as follows:

Sec. 48.211.  REPORT TO PROBATE [~~GUARDIANSHIP~~] COURT. If the elderly person or person with a disability has a guardian or a parental administrator, as defined by Section 1359.0001, Estates Code, a written notification of the findings of the investigation shall be sent to the court to which the guardian or parental administrator is accountable.

SECTION 2.14.  Section 118.052, Local Government Code, is amended to read as follows:

Sec. 118.052.  FEE SCHEDULE. Each clerk of a county court shall collect the following fees for services rendered to any person:

(1)  CIVIL COURT ACTIONS

(A)  Filing of Original Action (Sec. 118.053):

(i)  Garnishment after judgment . . . $15.00

(ii)  All others . . . $40.00

(B)  Filing of Action Other than Original (Sec. 118.054) . . . $30.00

(C)  Services Rendered After Judgment in Original Action (Sec. 118.0545):

(i)  Abstract of judgment . . . $ 5.00

(ii)  Execution, order of sale, writ, or other process . . . $ 5.00

(2)  PROBATE COURT ACTIONS

(A)  Probate Original Action (Sec. 118.055):

(i)  Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, parental administration, or muniment of title . . . $40.00

(ii)  Community survivors . . . $40.00

(iii)  Small estates . . . $40.00

(iv)  Declarations of heirship . . . $40.00

(v)  Mental health or chemical dependency services . . . $40.00

(vi)  Additional, special fee (Sec. 118.064) . . . $ 5.00

(B)  Services in Pending Probate Action (Sec. 118.056):

(i)  Filing an inventory and appraisement as provided by Section 118.056(d) . . . $25.00

(ii)  Approving and recording bond . . . $ 3.00

(iii)  Administering oath . . . $ 2.00

(iv)  Filing annual or final account of estate . . . $25.00

(v)  Filing application for sale of real or personal property . . . $25.00

(vi)  Filing annual or final report of guardian of a person . . . $10.00

(vii)  Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisement or after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages . . . $25.00

(C)  Adverse Probate Action (Sec. 118.057) . . . $40.00

(D)  Claim Against Estate (Sec. 118.058) . . . $10.00

(E)  Supplemental Court-Initiated Guardianship Fee in Probate Original Actions and Adverse Probate Actions (Sec. 118.067) . . . $20.00

(F)  Supplemental Public Probate Administrator Fee For Counties That Have Appointed a Public Probate Administrator (Sec. 118.068) . . . $10.00

(3)  OTHER FEES

(A)  Issuing Document (Sec. 118.059):

original document and one copy . . . $ 4.00

each additional set of an original and one copy . . . $ 4.00

(B)  Certified Papers (Sec. 118.060):

for the clerk's certificate . . . $ 5.00

plus a fee per page or part of a page of . . . $ 1.00

(C)  Noncertified Papers (Sec. 118.0605):

for each page or part of a page . . . $ 1.00

(D)  Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment (Sec. 118.061) . . . $ 2.00

(E)  Deposit and Safekeeping of Wills (Sec. 118.062) . . . $ 5.00

(F)  Mail Service of Process (Sec. 118.063) . . . same as sheriff

(G)  Records Management and Preservation Fee . . . $ 5.00

(H)  Records Technology and Infrastructure Fee if authorized by the commissioners court of the county (Sec. 118.026) . . . $ 2.00

SECTION 2.15.  The heading to Section 25.10, Penal Code, is amended to read as follows:

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

SECTION 2.16.  Section 25.10(a), Penal Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(a)  In this section:

(1)  "Incapacitated adult" and "parental administrator" have the meanings assigned by Section 1359.0001, Estates Code.

(1-a)  "Possessory right" means:

(A)  the right of a guardian of the person to have physical possession of a ward and to establish the ward's legal domicile, as provided by Section 1151.051(c)(1), Estates Code; or

(B)  the right of a parental administrator to have physical possession of an incapacitated adult and to establish the incapacitated adult's legal domicile, as provided by Section 1359.0108, Estates Code.

SECTION 2.17.  Section 25.10, Penal Code, is amended by adding Subsection (b-1) and amending Subsection (d) to read as follows:

(b-1)  A person commits an offense if the person takes, retains, or conceals an incapacitated adult when the person knows that the person's taking, retention, or concealment interferes with a possessory right with respect to the incapacitated adult that is established in the order appointing a parental administrator by including the right of the parental administrator to:

(1)  have physical possession of the incapacitated adult; or

(2)  establish the incapacitated adult's legal domicile.

(d)  This section does not apply to a governmental entity where the taking, retention, or concealment of the individual [~~ward~~] was authorized by Subtitle E, Title 5, Family Code, or Chapter 48, Human Resources Code.

SECTION 2.18.  The changes in law made by this Act to Section 25.10, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01.  This Act takes effect September 1, 2019.