

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) a minor;
12 (2) an adult who, because of a physical or mental
13 condition, is substantially unable to:

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

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

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

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

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

23 CHAPTER 1359. PARENTAL ADMINISTRATION

24 SUBCHAPTER A. GENERAL PROVISIONS

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

26 (1) "Incapacitated adult" means a person who is 18
27 years of age or older and who is an incapacitated person as that

1 term is defined by Section 1002.017.

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

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

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

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

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

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

27 (c) If a parental administration proceeding is commenced in

1 more than one county or if a parental administration proceeding is
2 commenced in one county and a guardianship proceeding is commenced
3 in another county respecting the same incapacitated adult or
4 proposed incapacitated adult, the proceeding shall be stayed except
5 in the county in which a proceeding was initially commenced until
6 final determination of proper venue is made by the court in the
7 county in which a proceeding was initially commenced. A proceeding
8 is considered commenced by the filing of an application alleging
9 facts sufficient to confer venue.

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

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

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

25 (b) With notice as provided by Section 1359.0004, the court
26 in which a parental administration is pending, on the court's own
27 motion, may transfer the parental administration to another county

1 if the incapacitated adult resides in the county to which the
2 parental administration is to be transferred.

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

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

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

18 SUBCHAPTER B. FILING AND RECORDKEEPING

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

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

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

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

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

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

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

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

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

13 (2) the date the cost or fee accrued;

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

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

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

20 (1) on a computer file;

21 (2) on microfilm;

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

23 (4) in another similar form of data compilation.

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

1 clerk of the appropriate county.

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

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

7 (1) file the paper; and

8 (2) endorse on the paper:

9 (A) the date the paper is filed;

10 (B) the docket number; and

11 (C) the clerk's official signature.

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

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

18 (1) application for the granting of parental
19 administration;

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

22 (3) exhibit; and

23 (4) report.

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

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

1 SUBCHAPTER C. APPOINTMENT OF PARENTAL ADMINISTRATOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) the application is accompanied by a request for an
27 order under Section 1051.201 specifying the manner of issuance,

1 service, and return of citation or notice on the person.

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

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

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

10 (2) each other person named under Section
11 1359.0102(b)(8), (9), or (10).

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

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

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

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

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

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

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

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

8 (1) the Department of Public Safety; or

9 (2) the Federal Bureau of Investigation.

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

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

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

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

24 (1) is a minor or other incapacitated person;

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

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

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

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

6 (B) aggravated assault;

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

9 (D) abandoning or endangering a child;

10 (E) terroristic threat; or

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

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

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

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

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

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

27 (8) is disqualified in a written and signed

1 declaration made by the proposed incapacitated adult at a time
2 during which the proposed incapacitated adult had capacity; or

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

6 Sec. 1359.0108. ORDER APPOINTING PARENTAL ADMINISTRATOR.

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

15 (b) The order appointing a parental administrator must:

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

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

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

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

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

27 (E) the power to establish a trust in accordance

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

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

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

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

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

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

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

19 (3) state the name of each parent appointed;

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

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

24 (c) If the order appointing a parental administrator under
25 this section includes the right of the parental administrator to
26 have physical possession of the incapacitated adult or to establish
27 the incapacitated adult's legal domicile, the order must also

1 contain the following prominently displayed statement in boldfaced
2 type, in capital letters, or underlined:

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

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

20 (1) remove the rights of the incapacitated adult; or
21 (2) grant a power related to an incapacitated adult's
22 right to manage his or her property or financial affairs beyond the
23 powers specifically authorized under Subsection (b).

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

1 (1) administer only:

2 (A) the funds received from the governmental
3 source;

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

6 (C) all property acquired with the funds; and

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

10 (b) Expenditures under Subsection (a)(2) for the support,
11 maintenance, or education of the incapacitated adult or the
12 incapacitated adult's dependents may not exceed \$12,000 during any
13 12-month period without the court's approval.

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

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

1 for parental administration.

2 SUBCHAPTER D. ATTORNEYS AD LITEM AND INTERPRETERS

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

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

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

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

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

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

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

1 incapacitated adult:

2 (1) the law and facts of the case;

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

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

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

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

12 (1) the application for parental administration;

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

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

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

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

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

26 Sec. 1359.0154. COMPENSATION AND EXPENSES. An attorney ad
27 litem appointed under this subchapter is entitled to reasonable

1 compensation for services and expenses provided in the amount set
2 by the court, to be taxed as costs in the proceeding.

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

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

13 SUBCHAPTER E. GUARDIANS AD LITEM

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

18 (b) A guardian ad litem must have the certification required
19 by Section [1054.201](#).

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

25 Sec. 1359.0203. TERM OF CERTAIN APPOINTMENTS. Unless the
26 court determines that the continued appointment of a guardian ad
27 litem appointed under this subchapter is in the proposed

1 incapacitated adult's best interests, the guardian ad litem's term
2 of appointment expires, without a court order, on the date the court
3 appoints a parental administrator or denies the application for
4 appointment of a parental administrator.

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

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

11 (c) The guardian ad litem shall:

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

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

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

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

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

26 Sec. 1359.0206. IMMUNITY. (a) Subject to Subsection (b), a
27 guardian ad litem appointed under this subchapter to represent the

1 interests of a proposed incapacitated adult is not liable for civil
2 damages arising from a recommendation made or an opinion given in
3 the capacity of guardian ad litem.

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

6 (1) wilfully wrongful;

7 (2) given:

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

10 (B) with malice; or

11 (C) in bad faith; or

12 (3) grossly negligent.

13 SUBCHAPTER F. COURT INVESTIGATION

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

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

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

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

27 Sec. 1359.0253. INVESTIGATION REPORT. (a) A court

1 investigator shall file with the court a report containing the
2 court investigator's findings and conclusions after conducting an
3 investigation under this subchapter.

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

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

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

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

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

18 SUBCHAPTER G. HEARING; JURY TRIAL

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

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

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

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

26 (C) manage his or her property or financial

27 affairs; and

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

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

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

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

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

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

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

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

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

25 (3) a necessity exists for the parental
26 administration;

27 (4) it is in the proposed incapacitated adult's best

1 interests to have the court appoint a parental administrator;

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

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

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

13 (8) the court has venue of the case.

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

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

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

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

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

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

2 (2) a written letter or certificate that:

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

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

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

20 (B) complies with Subsection (b).

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

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

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

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

10 (A) understand or communicate;

11 (B) recognize familiar objects and individuals;

12 (C) solve problems;

13 (D) reason logically; and

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

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

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

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

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

27 (c) If the court determines it is necessary, the court may

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

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

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

17 Sec. 1359.0401. RIGHTS RETAINED BY INCAPACITATED ADULT.

18 (a) An incapacitated adult for whom a parental administrator is
19 appointed retains all legal and civil rights and powers.

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

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

25 Sec. 1359.0403. COMMITMENT OF INCAPACITATED ADULT. (a)
26 Except as provided by Subsection (b), a parental administrator may
27 not voluntarily admit an incapacitated adult to a public or private

1 inpatient psychiatric facility operated by the Health and Human
2 Services Commission for care and treatment or to a residential
3 facility operated by the commission for care and treatment. If care
4 and treatment in a psychiatric or residential facility is
5 necessary, the incapacitated adult or the parental administrator
6 may:

7 (1) apply for services under Section 593.027 or
8 593.028, Health and Safety Code;

9 (2) apply to a court to commit the incapacitated adult
10 under Subtitle C or D, Title 7, Health and Safety Code, or Chapter
11 462, Health and Safety Code; or

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

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

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

24 (b) A parental administrator of an incapacitated adult who
25 is under a protective custody order as provided by Subchapter B,
26 Chapter 574, Health and Safety Code, may consent to the
27 administration of psychoactive medication as prescribed by the

1 incapacitated adult's treating physician regardless of the
2 incapacitated adult's expressed preferences regarding treatment
3 with psychoactive medication, if the order appointing the parental
4 administrator grants the parental administrator the duty to provide
5 the incapacitated adult with medical care.

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

15 SUBCHAPTER J. REPORTING

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

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

26 Sec. 1359.0501. INTERFERENCE WITH INVESTIGATION OR
27 SERVICES PROHIBITED. A parental administrator may not interfere

1 with:

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

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

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

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

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

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

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

27 (3) is disqualified to act as a parental administrator

1 under Section 1359.0107;

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

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

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

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

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

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

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

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

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

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

26 (c) The court on its own motion may or on receipt of an
27 application under this section shall appoint a guardian ad litem or

1 court investigator to investigate the conditions and circumstances
2 of the parental administrator, including any facts alleged in the
3 application that would give rise to a finding of incapacity, to
4 determine whether there is probable cause to believe the parental
5 administrator is an incapacitated person. The court's order
6 appointing the guardian ad litem or court investigator must include
7 a statement that the parental administrator has the right to
8 petition the court to have the appointment set aside.

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

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

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

27 (g) A physician who examines the parental administrator

1 under this section shall return to the court a written letter or
2 certificate from the physician that describes the nature, degree,
3 and severity of the parental administrator's incapacity, if any,
4 including any functional deficits regarding the parental
5 administrator's ability to perform the duties the parental
6 administrator owes to the incapacitated adult. A written letter or
7 certificate by a physician finding incapacity under this subsection
8 may be relied on by the court only for purposes of making a
9 determination of incapacity under Sections 1359.0551(3) and
10 1359.0107(1).

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

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

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

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

26 Sec. 1359.0553. PROCEDURE FOR REMOVAL OF PARENTAL
27 ADMINISTRATOR OR CONVERSION OF PARENTAL ADMINISTRATION TO

1 GUARDIANSHIP. (a) The court on the court's own motion or on the
2 application of any person may initiate a proceeding to:

3 (1) subject to Subsection (b), remove a parental
4 administrator on proof of a ground for removal described by Section
5 1359.0551; or

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

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

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

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

15 (c) A citation under this section must state:

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

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

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

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

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

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

5 (1) provide notice of the conversion of a parental
6 administration to a guardianship in the manner required by Chapter
7 1051; and

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

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

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

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

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

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

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

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

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

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

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

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

7 SUBCHAPTER M. COMPENSATION, EXPENSES, AND COURT COSTS

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

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

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

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

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

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

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

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

16 (4) out of the county treasury if:

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

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

25 (b) In a parental administration proceeding, the cost of any
26 guardians ad litem, attorneys ad litem, health professionals, and
27 interpreters appointed under this chapter shall be set in an amount

1 the court considers equitable and just.

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

6 (1) an attorney ad litem;

7 (2) a guardian ad litem;

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

12 (4) a governmental entity.

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

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

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

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

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

27 (C) a nonprofit corporation formed under the laws

1 of this state that provides legal services to low-income
2 individuals whose household income is at or below 200 percent of the
3 federal poverty guidelines as determined by the United States
4 Department of Health and Human Services;

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

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

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

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

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

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

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

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

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

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

26 ARTICLE 2. CONFORMING AMENDMENTS

27 SECTION 2.01. Article 14.055, Code of Criminal Procedure,

1 is amended to read as follows:

2 Art. 14.055. DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a)

3 In this article:

4 (1) "Guardian" has the meaning assigned by Section
5 1002.012, Estates Code.

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

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

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

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

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

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

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

27 Art. 15.171. DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a)

1 In this article:

2 (1) "Guardian" has the meaning assigned by Section
3 1002.012, Estates Code.

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

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

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

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

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

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

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

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

27 (1) "Guardian" has the meaning assigned by Section

1 1002.012, Estates Code.

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

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

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

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

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

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

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

17 CHAPTER 155. DUTIES RESPECTING GUARDIANSHIP AND PARENTAL
18 ADMINISTRATION

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

21 (4-a) "Incapacitated adult" has the meaning assigned
22 by Section 1359.0001, Estates Code.

23 (5-a) "Parental administrator" has the meaning
24 assigned by Section 1359.0001, Estates Code.

25 SECTION 2.06. The heading to Subchapter D, Chapter 155,
26 Government Code, as added by Chapter 313 (S.B. 1096), Acts of the
27 85th Legislature, Regular Session, 2017, is amended to read as

1 follows:

2 SUBCHAPTER D. GUARDIANSHIP AND PARENTAL ADMINISTRATION

3 REGISTRATION AND DATABASE

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

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

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

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

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

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

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

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

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

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

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

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

1 by the court with jurisdiction over the guardianship or parental
2 administration."

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

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

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

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

21 (1) the patient;

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

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

1 ~~to medical treatment]~~.

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

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

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

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

- 15 (1) CIVIL COURT ACTIONS
 - 16 (A) Filing of Original Action (Sec. 118.053):
 - 17 (i) Garnishment after judgment . . . \$15.00
 - 18 (ii) All others . . . \$40.00
 - 19 (B) Filing of Action Other than Original (Sec.
20 118.054) . . . \$30.00
 - 21 (C) Services Rendered After Judgment in Original
22 Action (Sec. 118.0545):
 - 23 (i) Abstract of judgment . . . \$ 5.00
 - 24 (ii) Execution, order of sale, writ, or
25 other process . . . \$ 5.00

- 26 (2) PROBATE COURT ACTIONS
 - 27 (A) Probate Original Action (Sec. 118.055):

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

5 (ii) Community survivors . . . \$40.00

6 (iii) Small estates . . . \$40.00

7 (iv) Declarations of heirship . . . \$40.00

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

10 (vi) Additional, special fee (Sec. 118.064)
11 . . . \$ 5.00

12 (B) Services in Pending Probate Action (Sec.
13 118.056):

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

16 (ii) Approving and recording bond . . . \$
17 3.00

18 (iii) Administering oath . . . \$ 2.00

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

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

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

25 (vii) Filing a document not listed under
26 this paragraph after the filing of an order approving the inventory
27 and appraisement or after the 120th day after the date of the

1 initial filing of the action, whichever occurs first, if more than
2 25 pages . . . \$25.00
3 (C) Adverse Probate Action (Sec. 118.057) . . .
4 \$40.00
5 (D) Claim Against Estate (Sec. 118.058) . . .
6 \$10.00
7 (E) Supplemental Court-Initiated Guardianship
8 Fee in Probate Original Actions and Adverse Probate Actions (Sec.
9 118.067) . . . \$20.00
10 (F) Supplemental Public Probate Administrator
11 Fee For Counties That Have Appointed a Public Probate Administrator
12 (Sec. 118.068) . . . \$10.00
13 (3) OTHER FEES
14 (A) Issuing Document (Sec. 118.059):
15 original document and one copy . . . \$ 4.00
16 each additional set of an original and one copy . . . \$ 4.00
17 (B) Certified Papers (Sec. 118.060):
18 for the clerk's certificate . . . \$ 5.00
19 plus a fee per page or part of a page of . . . \$ 1.00
20 (C) Noncertified Papers (Sec. 118.0605):
21 for each page or part of a page . . . \$ 1.00
22 (D) Letters Testamentary, Letter of
23 Guardianship, Letter of Administration, or Abstract of Judgment
24 (Sec. 118.061) . . . \$ 2.00
25 (E) Deposit and Safekeeping of Wills (Sec.
26 118.062) . . . \$ 5.00
27 (F) Mail Service of Process (Sec. 118.063) . . .

1 same as sheriff

2 (G) Records Management and Preservation Fee
3 . . . \$ 5.00

4 (H) Records Technology and Infrastructure Fee if
5 authorized by the commissioners court of the county (Sec. 118.026)
6 . . . \$ 2.00

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

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

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

14 (a) In this section:

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

18 (1-a) "Possessory right" means:

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

22 (B) the right of a parental administrator to have
23 physical possession of an incapacitated adult and to establish the
24 incapacitated adult's legal domicile, as provided by Section
25 1359.0108, Estates Code.

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

1 follows:

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

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

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

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

16 SECTION 2.18. The changes in law made by this Act to Section
17 25.10, Penal Code, apply only to an offense committed on or after
18 the effective date of this Act. An offense committed before the
19 effective date of this Act is governed by the law in effect on the
20 date the offense was committed, and the former law is continued in
21 effect for that purpose. For purposes of this section, an offense
22 was committed before the effective date of this Act if any element
23 of the offense occurred before that date.

24 ARTICLE 3. EFFECTIVE DATE

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