

## **BILL ANALYSIS**

Senate Research Center

H.B. 1675  
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Jurisprudence  
5/10/2021  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

#### Statement of Purpose

Make the guardianship process less invasive and burdensome for parents of children who require guardianship after turning 18 by setting out an alternative application process that does not require an initial hearing, an attorney, or court investigators.

#### Background

State law requires that parental rights be transferred to a child when the child turns 18 years of age unless a parent or other person has been granted guardianship under the Texas Estates Code. Thus, parents have no choice but to obtain guardianship by way of an incredibly challenging process. The guardianship process presumes that the parents are no longer fit to raise their child and places the burden on parents to prove that they are fit, even if their parenting has met a reasonable standard or even exceptional standard of care. The process requires the engagement of an attorney and out-of-pocket expenses of over \$5,000. Furthermore, the process requires an attorney ad litem to come into the home, delve into the personal lives of all involved, and file a report with the court. Often, the attorney ad litem knows little about individuals with disabilities and or special education law. The process also requires an annual written report filed with the court at a cost of \$450 per year and an annual visit from the court. Interested parties find this requirement to be unnecessarily invasive, presuming the parents or guardian is unfit in the absence of any evidence to the contrary.

H.B. 1675 will offer an alternative application that does not require a hearing, an attorney, or court investigators in an attempt to make the process less challenging to those guardians with no prior complaints or allegations and who have previously met reasonable and acceptable expectations of care.

H.B. 1675 amends current law relating to guardianships of the person of wards with profound intellectual disabilities who are minors or were minors when their guardianship proceedings commenced.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Authorizes this Act to be cited as Caleb's Law.

SECTION 2. Amends Section 1054.001, Estates Code, to create an exception under Section 1103A.001 to the requirement that a court appoint an attorney ad litem to represent a proposed ward's interests.

SECTION 3. Amends Section 1054.151, Estates Code, to create an exception under Section 1103A.001 to the requirement that the circumstances alleged in an application for guardianship be investigated to determine whether a less restrictive alternative to guardianship is appropriate.

SECTION 4. Amends Subtitle D, Title 3, Estates Code, by adding Chapter 1103A, as follows:

CHAPTER 1103A. PROCEDURE TO APPOINT CAREGIVER PARENT AS INDEPENDENT  
GUARDIAN OF THE PERSON FOR CERTAIN MINORS REQUIRING GUARDIANSHIPS  
AS ADULTS

Sec. 1103A.001. PROCEDURE FOR APPOINTMENT OF CAREGIVER PARENT AS INDEPENDENT GUARDIAN OF THE PERSON OF CERTAIN MINORS WITH PROFOUND INTELLECTUAL DISABILITIES. (a) Provides that this section applies only to a proceeding for the appointment of a guardian of the person of a proposed ward under Section 1101.001 (Application for Appointment of Guardian; Contents) or 1103.001 (Application for Appointment of Guardian) in which the:

(1) proposed ward is a minor who:

(A) has a profound intellectual disability, as diagnosed by a physician licensed to practice in this state or as determined, following an examination, by a psychologist licensed in this state or certified by the Health and Human Services Commission (HHSC) to perform the examination, in accordance with rules adopted by the executive commissioner of HHSC governing examinations of that kind; and

(B) because of the incapacity described by Paragraph (A) will require a guardianship of the person after the proposed ward is no longer a minor; and

(2) proposed guardian of the person is a parent and primary caregiver of the proposed ward.

(b) Authorizes the applicant who files an application for appointment as guardian of the person of a proposed ward under Section 1101.001 or 1103.001, if the applicant is the parent and primary caregiver of the proposed ward, notwithstanding any other law, to present to the court:

(1) an affidavit sworn to by the applicant that states that the applicant is a parent of a proposed ward described by Subsection (a)(1) and:

(A) is and has been the primary caregiver of the proposed ward throughout all or most of his or her childhood;

(B) has never been the subject of an allegation, complaint, or investigation concerning the abuse, neglect, or exploitation of the proposed ward;

(C) seeks to be appointed guardian of the person of the proposed ward; and

(D) is not disqualified from serving as guardian under Subchapter H (Grounds for Disqualification), Chapter 1104;

(2) at least one written letter or certificate that meets the requirements of certain sections; and

(3) a written request that:

(A) the court make the findings required by Section 1101.101 and appoint the parent as guardian of the person of the proposed ward in accordance with this section without the necessity of an

investigation by a court investigator under Section 1054.151 (Investigation of Guardianship Application); and

(B) after appointment and qualification of the applicant as guardian of the person of the ward, no other action shall be had in the probate court in relation to the guardianship of the person of the ward other than the review required by Section 1201.052(b).

(c) Requires the court, if, following a written request under Subsection (b) and on receipt of an affidavit that complies with Subsection (b)(1) and a letter or certificate that complies with Subsection (b)(2), the court is able to make the findings required by Section 1101.101, notwithstanding Subchapter C (Selection of Guardian for Incapacitated Person Other Than Minor), Chapter 1104, to appoint the parent as guardian of the proposed ward's person without appointing a court investigator or the continued appointment of an attorney ad litem unless:

(1) the parent is disqualified from serving as guardian under Subchapter H, Chapter 1104;

(2) the court has any reason to believe that one or more of the assertions set out in the affidavit are untrue; or

(3) the court finds that the appointment is not in the best interest of the proposed ward.

(d) Provides that a guardianship created under this section is considered an independent guardianship of the person of a ward, and a guardian appointed under this section is considered an independent guardian of the person of a ward.

Sec. 1103A.002. SEALING OF CERTAIN RECORDS. (a) Requires the court to seal a written letter or certificate submitted under Section 1103A.001(b) and any other medical record or document examined by the court for purposes of this section unless the court finds good cause not to seal the document.

(b) Provides that the court's records sealed under this section are not open for inspection by any person except on further order of the court after notice to the guardian of the person of the ward whose information is sealed and a finding of good cause, or except in connection with a criminal or civil proceeding as otherwise provided by law.

Sec. 1103A.003. PETITION FOR CONVERSION OF GUARDIANSHIP OF THE PERSON TO INDEPENDENT GUARDIANSHIP OF THE PERSON. (a) Provides that this section applies only to a guardianship of the person of a ward created before September 1, 2021, if on the date the application for guardianship was filed under Section 1101.001 or 1103.001, the ward met the description of a proposed ward under Section 1103A.001(a)(1) and the guardian was the parent and primary caregiver of the ward.

(b) Authorizes the guardian in a guardianship to which this section applies to petition the court with jurisdiction over the guardianship to authorize that the guardianship of the person be treated on a prospective basis as if the guardianship was created and, if applicable, the guardian of the person appointed, under Section 1103A.001.

SECTION 5. Amends Section 1105.101(c), Estates Code, as follows:

(c) Requires the court to issue letters of guardianship of the person to a person without the requirement of a bond if certain criteria are met, including if the person is a parent of the ward appointed under Section 1103A.001 who is not also appointed as guardian of the estate of the ward. Makes nonsubstantive changes.

SECTION 6. Amends Section 1106.002, Estates Code, as follows:

Sec. 1106.002. EXPIRATION OF LETTERS OF GUARDIANSHIP. (a) Creates this subsection from existing text. Creates an exception under Subsection (b) to the provision establishing that letters of guardianship expire one year and four months after the date issued unless renewed and makes a nonsubstantive change.

(b) Provides that, unless the court finds that it is not in the best interest of the ward, letters of guardianship issued to a guardian of the person of a ward appointed under Section 1103A.001 do not expire unless the guardian is removed or would otherwise be ineligible to serve as guardian.

SECTION 7. Amends Section 1163.101, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Creates an exception under Subsection (a-1) to the requirement that a guardian file a certain annual report with the court and makes a nonsubstantive change.

(a-1) Provides that, unless the court finds that it is not in the best interest of the ward, a guardian of the person of a ward appointed under Section 1103A.001 is not required to file an annual report under this section.

SECTION 8. Amends the heading to Subchapter B, Chapter 1201, Estates Code, to read as follows:

SUBCHAPTER B. DETERMINATION TO CONTINUE, MODIFY, OR TERMINATE  
GUARDIANSHIP

SECTION 9. Amends Section 1201.052, Estates Code, as follows:

Sec. 1201.052. New heading: ANNUAL OR OTHER DETERMINATION. (a) Creates this subsection from existing text and creates an exception under Subsection (b) to the requirement that certain guardianships be renewed.

(b) Requires the court in which the guardianship proceeding is pending, to determine whether a guardianship of the person of a ward created under Section 1103A.001 should be continued, modified, or terminated, to review the guardianship of the person at the discretion of the court but not more frequently than once every five years unless the guardian of the person of the ward is also the guardian of the estate of the ward.

(c) Authorizes the court, notwithstanding Subsection (b), on receipt of a claim that the guardianship is no longer in the best interest of the ward, to review the matter and take any action the court determines necessary.

SECTION 10. Provides that the changes in law made by this Act apply to a guardianship proceeding that is pending or commenced on or after the effective date of this Act.

SECTION 11. Effective date: September 1, 2021.