

BILL ANALYSIS

Senate Research Center

S.B. 1129
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

If supports and services or alternatives to guardianship allow a person with an incapacity to live independently, a guardianship may not be necessary. When these options become available after a guardianship is established, full restoration of rights or modification of the guardianship may not be appropriate because the person's capacity has not changed. Instead, the guardianship should be terminated on a finding with medical evidence that the alternative would meet the person's needs without continued court involvement. S.B. 1129 would provide this statutory pathway. S.B. 1129 also would require courts to promote guardianship mediation to resolve family disputes, to avoid or minimize costs and conflict, and to explore less restrictive alternatives to guardianship and supports and services in the community.

What's more, courts with guardianship jurisdiction may transfer a case to a court in another county if the person under guardianship is moved to that county. This allows courts that are closer to the person with a guardian to monitor his or her care. Current law, however, does not explicitly require the recipient court to accept the transfer, and there is no clear appeal process. Accordingly, S.B. 1129 would provide this appeal process and outline factors to determine the best interests of the person with a guardian when determining which court should handle the case.

As proposed, S.B. 1129 amends current law relating to guardianships, alternatives to guardianship, and supports and services for incapacitated persons.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Office of Court Administration of the Texas Judicial System in SECTION 7 (Section 155.301, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1023.005, Estates Code, as follows:

Sec. 1023.005. COURT ACTION. (a) Creates this subsection from existing text. Requires a court, on hearing an application or motion under Section 1023.003 (Transfer of Guardianship to Another County), if it appears that transfer of the guardianship is in the best interests of the ward and either the ward has resided in the county to which the guardianship is to be transferred for at least six months or good cause is not otherwise shown to deny the transfer, rather than if good cause is not show to deny the transfer, to enter certain orders, including an order certifying that the guardianship is in compliance with this code at the time of transfer. Makes nonsubstantive changes.

(b) Authorizes the court, in making a determination that the transfer is in the best interests of the ward under Subsection (a), to consider the interests of justice, the convenience of the parties, and the preference of the ward, if the ward is 12 years of age or older.

(c) Requires the county, on receipt of an order described by Subsection (a), to accept the transfer of the guardianship.

SECTION 2. Amends Section 1023.008, Estates Code, as follows:

Sec. 1023.008. CONTINUATION OF GUARDIANSHIP. (a) Creates this subsection from existing text. Provides that, when a guardianship is transferred from one county to another in accordance with Chapter 1023 (Venue):

(1) creates this subdivision from existing text and makes nonsubstantive changes;

(2) the court to which the guardianship is transferred becomes the court of continuing, exclusive jurisdiction;

(3) a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;

(4) a judgment or order entered in the guardianship before the transfer has the same effect and is required to be enforced as a judgment or order entered by the court to which the guardianship is transferred; and

(5) the court ordering the transfer does not retain jurisdiction of the ward who is the subject of the guardianship, and does not retain the authority to enforce an order entered for a violation of Title 3 (Guardianship and Related Procedures) that occurred before or after the transfer.

(b) Creates this subsection from existing text and makes no further changes.

SECTION 3. Amends Chapter 1023, Estates Code, by adding Section 1023.011, as follows:

Sec. 1023.044. NO LIABILITY OF JUDGE. (a) Prohibits a judge of the court from which the guardianship is transferred from being held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurs after the transfer when a guardianship is transferred from one county to another in accordance with this chapter.

(b) Prohibits a judge of the court to which a guardianship is transferred as described by Subsection (a) from being held civilly liable for an injury, damage, or loss to the ward or the ward's estate that occurred before the transfer.

SECTION 4. Amends Subchapter D, Chapter 1055, Estates Code, as follows:

SUBCHAPTER D. MEDIATION

Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP PROCEEDING. (a) Authorizes a court, subject to Subsection (b), on the written agreement of the parties or on the court's own motion, to refer a contested guardianship proceeding to mediation. Makes a nonsubstantive change.

(b) Provides that if the court refers to mediation a proceeding under Subsection (a) regarding the appointment of a guardian for a proposed ward:

(1) a determination of incapacity of the proposed ward is authorized to be an issue to be mediated, but the applicant for guardianship is required to still prove to the court that the proposed ward is an incapacitated person in accordance with the requirements of Chapter 1101 (General Procedure to Appoint Guardian); and

(2) all parties to the proceeding are required to evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and

alternatives to guardianship would be feasible to avoid the need for appointment of a guardian.

(c) Requires that the cost of mediation be paid by the parties to the proceeding unless otherwise ordered by the court. Authorizes the court, if the parties are unable to pay the cost of mediation, to refer the parties to a local alternative dispute resolution center providing services as part of a system for resolution of disputes established under Section 152.002 (Establishment), Civil Practice and Remedies Code, if a system has been established in the county, and authorizes the local center to waive mediation costs as appropriate.

Sec. 1055.152. **MEDIATED SETTLEMENT AGREEMENTS.** (a) Creates this subsection from existing text and makes no further changes.

(b) Creates this subsection from existing text and makes a nonsubstantive change.

(c) Creates this subsection from existing text and makes conforming changes.

SECTION 5. Amends Section 1202.001, Estates Code, by adding Subsection (b-1) to require that a guardianship of the person be settled and closed when the court finds that the ward's incapacity needs can be managed without the necessity for that continued guardianship by an alternative to guardianship or with supports and services as provided by Subchapter F.

SECTION 6. Amends Chapter 1202, Estates Code, by adding Subchapter F, as follows:

SUBCHAPTER F. TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING THAT THE WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT GUARDIANSHIP

Sec. 1202.231. **TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING THAT WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT GUARDIANSHIP.** (a) Authorizes the court to order that the guardianship of the person of the ward terminate and be settled and closed if the court makes the findings required under Section 1202.233 in addition to a court's possible termination of a guardianship under Section 1202.001(b) (relating to certain conditions under which a guardianship is settled and closed), on application by the guardian of the person of a ward, a court investigator or guardian ad litem appointed by the court, or another person interested in the ward's welfare who has been granted permission by the court to intervene under Section 1055.003 (Intervention by Interested Person), or on the court's own motion and subject to Section 1202.232.

Sec. 1202.232. **PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED.** (a) Prohibits the court from granting an order terminating a guardianship of the person under Section 1202.231 unless the applicant presents to the court or the court secures a written letter or certificate from a physician licensed in this state that is dated not earlier than the 120th day before the date the application was filed or the date the court enters the court's motion, or dated any time after the date the application was filed or the date the court's motion was entered but before the date of the hearing.

(b) Requires that a letter or certificate presented under Subsection (a) contain certain information.

(c) Authorizes the court to appoint the necessary physicians to examine the ward, if the court determines it is necessary.

Sec. 1202.233. **FINDINGS REQUIRED.** Requires the court, before ordering the termination of a guardianship of the person under Section 1202.231, to find by a preponderance of the evidence that:

(1) the ward remains a partially or completely incapacitated person;

(2) the current nature and degree of the ward's incapacity and the ward's needs can be managed without the necessity of a continued guardianship of the person by alternatives to guardianship that are available to the ward and that are determined to be feasible, or by supports and services that are available to the ward and that are determined to be feasible; and

(3) termination of the guardianship of the person is in the ward's best interest, and will encourage the development or maintenance of maximum self-reliance and independence in the ward.

Sec. 1202.234. GENERAL REQUIREMENTS FOR ORDER. Requires that a court order that terminates a guardianship of the person under this subchapter contain certain information.

Sec. 1202.235. APPOINTMENT OF ATTORNEY AD LITEM OR GUARDIAN AD LITEM. Authorizes a court to enter additional orders in the best interest of the ward, including requiring notice to interested persons, appointing a court investigator, or appointing an attorney ad litem or guardian ad litem, or both, for the ward.

SECTION 7. Amends Chapter 155, Government Code, by adding Subchapter G, as follows:

SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

Sec. 155.301. TRAINING. (a) Requires the Office of Court Administration of the Texas Judicial System (OCA) by rule to establish a training course with at least 24 hours of training for persons facilitating mediations under Title 3, Estates Code, that are authorized to be provided by a mediation training provider approved by OCA. Requires a mediation training provider to adhere to the established curriculum in providing the training course.

(b) Provides that this section does not require a mediator facilitating a mediation under Title 3, Estates Code, to attend or be certified under a training course established under Subsection (a).

SECTION 8. Provides that the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 9. Provides that OCA is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Provides that, if the legislature does not appropriate money specifically for that purpose, OCA is authorized to, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 10. Effective date: September 1, 2021.