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By:  Allison H.B. No. 1675

A BILL TO BE ENTITLED

AN ACT

relating to guardianships of wards with profound intellectual disabilities who are minors or were minors when their guardianship proceedings commenced.

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

SECTION 1.  Section 1054.001, Estates Code, is amended to read as follows:

Sec. 1054.001.  APPOINTMENT OF ATTORNEY AD LITEM IN PROCEEDING FOR APPOINTMENT OF GUARDIAN.  In a proceeding under this title for the appointment of a guardian and except as provided by Section 1103A.001, the court shall appoint an attorney ad litem to represent the proposed ward's interests.

SECTION 2.  Section 1054.151, Estates Code, is amended to read as follows:

Sec. 1054.151.  INVESTIGATION OF GUARDIANSHIP APPLICATION. On the filing of an application for guardianship under Section 1101.001 and except as provided by Section 1103A.001, a court investigator shall investigate the circumstances alleged in the application to determine whether a less restrictive alternative to guardianship is appropriate.

SECTION 3.  Subtitle D, Title 3, Estates Code, is amended by adding Chapter 1103A to read as follows:

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

Sec. 1103A.001.  PROCEDURE FOR APPOINTMENT OF CAREGIVER PARENT AS INDEPENDENT GUARDIAN OF CERTAIN MINORS WITH PROFOUND INTELLECTUAL DISABILITIES. (a) This section applies only to a proceeding for the appointment of a guardian under Section 1101.001 or 1103.001 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 to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind; and

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

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

(b)  Notwithstanding any other law, if the applicant who files an application under Section 1101.001 or 1103.001 is the parent and primary caregiver of the proposed minor ward, the applicant may present to the court:

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

(A)  is and has been the primary caregiver of the proposed minor 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 minor ward;

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

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

(2)  at least one written letter or certificate that meets the requirements of:

(A)  Sections 1101.103(a) and (b); or

(B)  Section 1101.104, except that the period prescribed by Section 1101.104(2) would apply to the date the application is filed; and

(3)  a written request that:

(A)  the court make the findings required by Section 1101.101 and appoint the parent guardian in accordance with this section without a hearing or the necessity of an appointment of an attorney ad litem under Section 1054.001 or investigation by a court investigator under Section 1054.151; and

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

(c)  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, the court, notwithstanding Subchapter C, Chapter 1104, shall appoint the parent as guardian of the proposed minor ward without conducting a hearing or appointing an attorney ad litem or court investigator 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 minor ward.

(d)  A guardianship created under this section is considered an independent guardianship, and a guardian appointed under this section is considered an independent guardian.

Sec. 1103A.002.  SEALING OF CERTAIN RECORDS. (a) The court shall 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)  The court's records sealed under this section are not open for inspection by any person except:

(1)  on further order of the court after notice to the guardian of the minor ward whose information is sealed and a finding of good cause; or

(2)  in connection with a criminal or civil proceeding as otherwise provided by law.

Sec. 1103A.003.  PETITION FOR CONVERSION OF GUARDIANSHIP TO INDEPENDENT GUARDIANSHIP. (a) This section applies only to a guardianship created before September 1, 2021, if on the date the application for guardianship was filed under Section 1101.001 or 1103.001:

(1)  the ward met the description of a proposed minor ward under Section 1103A.001(a)(1); and

(2)  the guardian was the parent and primary caregiver of the ward.

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

SECTION 4.  Section 1105.101(c), Estates Code, is amended to read as follows:

(c)  The court shall issue letters of guardianship of the person to a person without the requirement of a bond if:

(1)  the person is:

(A)  a parent of the ward appointed under Section 1103A.001; or

(B)  named to be appointed guardian in a will made by a surviving parent that is probated by a court in this state, or in a written declaration made by a surviving parent, and the will or declaration directs that the guardian serve without a bond; and

(2)  the court finds that the guardian is qualified.

SECTION 5.  Section 1106.002, Estates Code, is amended to read as follows:

Sec. 1106.002.  EXPIRATION OF LETTERS OF GUARDIANSHIP. (a) Except as provided by Subsection (b), letters [~~Letters~~] of guardianship expire one year and four months after the date the letters are issued, unless renewed.

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

SECTION 6.  Section 1163.001(a), Estates Code, is amended to read as follows:

(a)  Not later than the 60th day after the first anniversary of the date the guardian of the estate of a ward qualifies, unless the court extends that period and except as provided by Section 1163.0025, the guardian shall file with the court an account consisting of a written exhibit made under oath that:

(1)  lists all claims against the estate presented to the guardian during the period covered by the account; and

(2)  specifies:

(A)  which claims have been:

(i)  allowed by the guardian;

(ii)  paid by the guardian; or

(iii)  rejected by the guardian and the date the claims were rejected; and

(B)  which claims have been the subject of a lawsuit and the status of that lawsuit.

SECTION 7.  Section 1163.002(a), Estates Code, is amended to read as follows:

(a)  Except as provided by Section 1163.0025, a [~~A~~] guardian of the estate shall file an annual account conforming to the essential requirements of Section 1163.001 regarding changes in the estate assets occurring since the date the most recent previous account was filed.

SECTION 8.  Subchapter A, Chapter 1163, Estates Code, is amended by adding Section 1163.0025 to read as follows:

Sec. 1163.0025.  EXCEPTION FOR CERTAIN GUARDIANSHIPS. Unless the court finds that it is not in the best interest of the ward, a guardian of a ward appointed under Section 1103A.001 is not required to file an annual account under this subchapter.

SECTION 9.  Section 1163.101, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  Except as provided by Subsection (a-1), once [~~Once~~] each year for the duration of the guardianship, a guardian of the person shall file with the court a report that contains the information required by this section.

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

SECTION 10.  The heading to Subchapter B, Chapter 1201, Estates Code, is amended to read as follows:

SUBCHAPTER B. [~~ANNUAL~~] DETERMINATION TO CONTINUE, MODIFY, OR TERMINATE GUARDIANSHIP

SECTION 11.  Section 1201.052, Estates Code, is amended to read as follows:

Sec. 1201.052.  ANNUAL OR OTHER DETERMINATION. (a) To determine whether a guardianship should be continued, modified, or terminated, the court in which the guardianship proceeding is pending:

(1)  shall, except as provided by Subsection (b), review annually each guardianship in which the application to create the guardianship was filed after September 1, 1993; and

(2)  may review annually any other guardianship.

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

SECTION 12.  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 13.  This Act takes effect September 1, 2021.