

By: Allison, Middleton, Pacheco

H.B. No. 1675

A BILL TO BE ENTITLED

AN ACT

relating to guardianships of the person 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. This Act may be cited as Caleb's Law.

SECTION 2. 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 3. 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 4. 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

1 GUARDIAN OF THE PERSON FOR CERTAIN MINORS REQUIRING GUARDIANSHIPS

2 AS ADULTS

3 Sec. 1103A.001. PROCEDURE FOR APPOINTMENT OF CAREGIVER
4 PARENT AS INDEPENDENT GUARDIAN OF THE PERSON OF CERTAIN MINORS WITH
5 PROFOUND INTELLECTUAL DISABILITIES. (a) This section applies only
6 to a proceeding for the appointment of a guardian of the person of a
7 proposed ward under Section 1101.001 or 1103.001 in which the:

8 (1) proposed ward is a minor who:

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

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

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

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

26 (1) an affidavit sworn to by the applicant that states
27 that the applicant is a parent of a proposed ward described by

1 Subsection (a)(1) and:

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

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

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

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

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

13 (A) Sections 1101.103(a) and (b); or

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

17 (3) a written request that:

18 (A) the court make the findings required by
19 Section 1101.101 and appoint the parent as guardian of the person of
20 the proposed ward in accordance with this section without the
21 necessity of an investigation by a court investigator under Section
22 1054.151; and

23 (B) after appointment and qualification of the
24 applicant as guardian of the person of the ward, no other action
25 shall be had in the probate court in relation to the guardianship of
26 the person of the ward other than the review required by Section
27 1201.052(b).

1 (c) If, following a written request under Subsection (b) and
2 on receipt of an affidavit that complies with Subsection (b)(1) and
3 a letter or certificate that complies with Subsection (b)(2), the
4 court is able to make the findings required by Section 1101.101, the
5 court, notwithstanding Subchapter C, Chapter 1104, shall appoint
6 the parent as guardian of the proposed ward's person without
7 appointing a court investigator or the continued appointment of an
8 attorney ad litem unless:

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

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

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

15 (d) A guardianship created under this section is considered
16 an independent guardianship of the person of a ward, and a guardian
17 appointed under this section is considered an independent guardian
18 of the person of a ward.

19 Sec. 1103A.002. SEALING OF CERTAIN RECORDS. (a) The court
20 shall seal a written letter or certificate submitted under Section
21 1103A.001(b) and any other medical record or document examined by
22 the court for purposes of this section unless the court finds good
23 cause not to seal the document.

24 (b) The court's records sealed under this section are not
25 open for inspection by any person except:

26 (1) on further order of the court after notice to the
27 guardian of the person of the ward whose information is sealed and a

1 finding of good cause; or

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

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

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

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

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

19 SECTION 5. Section 1105.101(c), Estates Code, is amended to
20 read as follows:

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

23 (1) the person is:

24 (A) a parent of the ward appointed under Section
25 1103A.001 who is not also appointed as guardian of the estate of the
26 ward; or

27 (B) named to be appointed guardian in a will made

1 by a surviving parent that is probated by a court in this state, or
2 in a written declaration made by a surviving parent, and the will or
3 declaration directs that the guardian serve without a bond; and

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

5 SECTION 6. Section 1106.002, Estates Code, is amended to
6 read as follows:

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

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

16 SECTION 7. Section 1163.101, Estates Code, is amended by
17 amending Subsection (a) and adding Subsection (a-1) to read as
18 follows:

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

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

27 SECTION 8. The heading to Subchapter B, Chapter 1201,

1 Estates Code, is amended to read as follows:

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

4 SECTION 9. Section 1201.052, Estates Code, is amended to
5 read as follows:

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

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

13 (2) may review annually any other guardianship.

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

21 (c) Notwithstanding Subsection (b), on receipt of a claim
22 that the guardianship is no longer in the best interest of the ward,
23 the court may review the matter and take any action the court
24 determines necessary.

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

1 SECTION 11. This Act takes effect September 1, 2021.