

By: Allison

H.B. No. 1675

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to guardianships of wards with profound intellectual  
3 disabilities who are minors or were minors when their guardianship  
4 proceedings commenced.

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

6 SECTION 1. Section [1054.001](#), Estates Code, is amended to  
7 read as follows:

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

13 SECTION 2. Section [1054.151](#), Estates Code, is amended to  
14 read as follows:

15 Sec. 1054.151. INVESTIGATION OF GUARDIANSHIP APPLICATION.  
16 On the filing of an application for guardianship under Section  
17 [1101.001](#) and except as provided by Section 1103A.001, a court  
18 investigator shall investigate the circumstances alleged in the  
19 application to determine whether a less restrictive alternative to  
20 guardianship is appropriate.

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

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

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

6               (1) proposed ward is a minor who:

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

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

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

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

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

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

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

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

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

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

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

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

14           (3) a written request that:

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

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

24           (c) If, following a written request under Subsection (b) and  
25 on receipt of an affidavit that complies with Subsection (b)(1) and  
26 a letter or certificate that complies with Subsection (b)(2), the  
27 court is able to make the findings required by Section 1101.101, the

1 court, notwithstanding Subchapter C, Chapter 1104, shall appoint  
2 the parent as guardian of the proposed minor ward without  
3 conducting a hearing or appointing an attorney ad litem or court  
4 investigator unless:

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

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

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

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

14 Sec. 1103A.002. SEALING OF CERTAIN RECORDS. (a) The court  
15 shall seal a written letter or certificate submitted under Section  
16 1103A.001(b) and any other medical record or document examined by  
17 the court for purposes of this section unless the court finds good  
18 cause not to seal the document.

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

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

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

26 Sec. 1103A.003. PETITION FOR CONVERSION OF GUARDIANSHIP TO  
27 INDEPENDENT GUARDIANSHIP. (a) This section applies only to a

1 guardianship created before September 1, 2021, if on the date the  
2 application for guardianship was filed under Section 1101.001 or  
3 1103.001:

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

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

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

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

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

17 (1) the person is:

18 (A) a parent of the ward appointed under Section  
19 1103A.001; or

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

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

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

27 Sec. 1106.002. EXPIRATION OF LETTERS OF GUARDIANSHIP. (a)

1 Except as provided by Subsection (b), letters [~~Letters~~] of  
2 guardianship expire one year and four months after the date the  
3 letters are issued, unless renewed.

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

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

11 (a) Not later than the 60th day after the first anniversary  
12 of the date the guardian of the estate of a ward qualifies, unless  
13 the court extends that period and except as provided by Section  
14 1163.0025, the guardian shall file with the court an account  
15 consisting of a written exhibit made under oath that:

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

18 (2) specifies:

19 (A) which claims have been:

20 (i) allowed by the guardian;

21 (ii) paid by the guardian; or

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

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

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

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

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

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

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

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

19 (a-1) Unless the court finds that it is not in the best  
20 interest of the ward, a guardian of a ward appointed under Section  
21 1103A.001 is not required to file an annual report under this  
22 section.

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

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

27 SECTION 11. Section 1201.052, Estates Code, is amended to

1 read as follows:

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

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

9           (2) may review annually any other guardianship.

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

15           SECTION 12. The changes in law made by this Act apply to a  
16 guardianship proceeding that is pending or commenced on or after  
17 the effective date of this Act.

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