

By: Zaffirini

S.B. No. 960

A BILL TO BE ENTITLED

AN ACT

relating to a pilot program that allows counties to establish public guardians for certain incapacitated persons.

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

SECTION 1. Chapter 1104, Estates Code, is amended by adding Subchapter G-1 to read as follows:

SUBCHAPTER G-1. PILOT PROGRAM TO ESTABLISH PUBLIC GUARDIANS

Sec. 1104.326. DEFINITIONS. In this subchapter:

(1) "Office," unless the context requires otherwise, means an office of public guardian established under the pilot program.

(2) "Participating county" means a county that participates in the pilot program.

(3) "Pilot program" means the pilot program established under Section 1104.327.

Sec. 1104.327. ESTABLISHMENT OF PILOT PROGRAM; PUBLIC GUARDIANS. (a) Not later than January 1, 2022, the Office of Court Administration of the Texas Judicial System shall develop and implement a pilot program under which the office will assist one or more counties that elect to participate in the program to establish public guardians in accordance with this subchapter. The program must require, if a county elects to participate in the program, that the commissioners court of the county by order:

(1) create an office of public guardian to provide

1 guardianship services described by Section 1104.334 to
2 incapacitated persons; or

3 (2) enter into an agreement with a person operating a
4 nonprofit guardianship program or private professional
5 guardianship program located in the county or in an adjacent county
6 to act as a public guardian by providing guardianship services
7 described by Section 1104.334 to incapacitated persons.

8 (b) Subject to Subsection (c) and Section 1104.328, the
9 commissioners court of a participating county shall appoint an
10 individual as public guardian to administer the office of public
11 guardian established under Subsection (a)(1) and may employ or
12 authorize the public guardian to employ personnel necessary to
13 perform the duties of the office, including personnel who will
14 represent the interests of a ward as a guardian on behalf of the
15 office if approved by the commissioners court.

16 (c) The commissioners court of a participating county may
17 enter into an agreement with an individual to act as public guardian
18 under Subsection (b) on a part-time basis with appropriate
19 compensation if:

20 (1) the commissioners court determines a full-time
21 appointment does not serve the needs of the county; and

22 (2) the individual who is appointed on a part-time
23 basis is not employed in or does not hold another position that
24 presents a conflict of interest.

25 (d) The commissioners courts of two or more participating
26 counties may collectively enter into an agreement:

27 (1) to create and fund an office of public guardian for

1 purposes of Subsection (a)(1) and to appoint the same individual as
2 public guardian to that office under Subsection (b); or

3 (2) with a person operating a guardianship program
4 described by Subsection (a)(2) to serve as a public guardian for
5 purposes of that subdivision.

6 (e) An individual appointed as public guardian under
7 Subsection (b) serves a term that expires on September 1, 2023.

8 Sec. 1104.328. QUALIFICATIONS OF PUBLIC GUARDIAN. To be
9 appointed as public guardian under Section 1104.327(b), an
10 individual must:

11 (1) be a licensed attorney or be certified under
12 Subchapter C, Chapter 155, Government Code; and

13 (2) have demonstrable guardianship experience.

14 Sec. 1104.329. CONFLICT OF INTEREST. (a) Except as
15 provided by Subsection (b), an office or a public guardian must be
16 independent from providers of services to wards and proposed wards
17 and may not directly provide housing, medical, legal, or other
18 direct, non-surrogate decision-making services to a ward or
19 proposed ward, unless approved by the court.

20 (b) An office or a public guardian may provide money
21 management services described by Section 531.125, Government Code,
22 or other representative payee services to a ward or proposed ward.

23 Sec. 1104.330. COMPENSATION. A person appointed or acting
24 as public guardian under Section 1104.327 shall receive
25 compensation as set by the commissioners court and is not entitled
26 to compensation under Subchapter A, Chapter 1155, unless approved
27 by the court or the person is appointed as guardian of a ward in

1 accordance with Section 1104.334(a)(2)(B).

2 Sec. 1104.331. BOND REQUIREMENT. (a) A public guardian
3 shall file with the court clerk a general bond in an amount fixed by
4 the commissioners court payable to the participating county and
5 issued by a surety company approved by the county judge. The bond
6 must be conditioned on the faithful performance by the person of the
7 person's duties and, if the public guardian administers an office,
8 the office's duties.

9 (b) The bond required by this section satisfies any bond
10 required under Chapter 1105.

11 Sec. 1104.332. VACANCY. If an individual appointed as
12 public guardian under Section 1104.327(b) vacates the position, the
13 commissioners court of the participating county shall appoint,
14 subject to Section 1104.328, an individual to serve as public
15 guardian for the unexpired term.

16 Sec. 1104.333. POWERS AND DUTIES. (a) An office or a
17 public guardian shall:

18 (1) if applicable, evaluate the financial status of a
19 proposed ward to determine whether the proposed ward is eligible to
20 have the office or public guardian appointed guardian of the ward
21 under Section 1104.334(a)(2)(A); and

22 (2) serve as guardian of the person or of the estate of
23 a ward, or both, on appointment by a court in accordance with the
24 requirements of this title.

25 (b) In connection with a financial evaluation under
26 Subsection (a)(1) and on the request of an office or a public
27 guardian, a court with jurisdiction over the guardianship

1 proceeding may order the release of public and private records,
2 including otherwise confidential records, to the office or public
3 guardian.

4 (c) Notwithstanding Section 552.261, Government Code, a
5 state agency may not charge an office or a public guardian for
6 providing the office or public guardian with a copy of public
7 information requested from the agency by the office or public
8 guardian.

9 Sec. 1104.334. APPOINTMENT OF OFFICE OR PUBLIC GUARDIAN AS
10 GUARDIAN. (a) In accordance with applicable law, including
11 Subchapter C, Chapter 1101, a court may appoint an office or a
12 public guardian to serve as guardian of the person or of the estate
13 of a ward, or both, if:

14 (1) on the date the guardianship application is filed,
15 the ward resides in or is located in a participating county served
16 by an office or a public guardian; and

17 (2) the court finds that the ward:

18 (A) does not have sufficient assets or other
19 resources to pay a private professional guardian to serve as the
20 ward's guardian and the appointment is in the ward's best interest;
21 or

22 (B) has sufficient assets or other resources to
23 pay a private professional guardian to serve as the ward's
24 guardian, the appointment is in the ward's best interest, and:

25 (i) the ward's family members who are
26 eligible for appointment as the ward's guardian agree to the
27 appointment of an office or a public guardian to serve as the ward's

1 guardian or are unable to agree on the person or persons that should
2 be appointed as the ward's guardian; or

3 (ii) the ward does not have a family member,
4 friend, or other suitable person willing and able to serve as the
5 ward's guardian.

6 (b) For purposes of Subsection (a)(2), the determination of
7 a ward's ability to pay a private professional guardian is
8 dependent on:

9 (1) the nature, extent, and liquidity of the ward's
10 assets;

11 (2) the ward's disposable net income, including income
12 of a recipient of medical assistance that is used to pay expenses
13 under Section 1155.202(a);

14 (3) the nature of the guardianship;

15 (4) the type, duration, and complexity of services
16 required by the ward; and

17 (5) additional, foreseeable expenses.

18 (c) The number of appointments of an office under the pilot
19 program may not exceed 35 wards for each guardian representing the
20 interests of wards on behalf of the office.

21 (d) If each guardian representing the interests of wards on
22 behalf of an office reaches the limitation provided by Subsection
23 (c), the office shall immediately give notice to the courts.

24 Sec. 1104.335. CONFIDENTIALITY AND DISCLOSURE OF
25 INFORMATION. (a) All files, reports, records, communications, or
26 working papers used or developed by an office or a public guardian
27 in the performance of duties relating to a financial evaluation

1 under Section 1104.333(a)(1) or the provision of guardianship
2 services are confidential and not subject to disclosure under
3 Chapter 552, Government Code.

4 (b) Confidential information may be disclosed only for a
5 purpose consistent with this subchapter, as required by other state
6 or federal law, or as necessary to enable an office or a public
7 guardian to exercise the powers and duties as guardian of the person
8 or of the estate of a ward, or both.

9 (c) A court on its own motion or on the motion of an
10 interested person may order disclosure of confidential information
11 only if:

12 (1) a hearing on the motion is conducted;

13 (2) notice of the hearing is served on the office or
14 public guardian and each interested person; and

15 (3) the court determines after the hearing and an in
16 camera review of the information that disclosure is essential to
17 the administration of justice and will not endanger the life or
18 safety of any individual who:

19 (A) is being assessed for guardianship services;

20 (B) is a ward of the office or public guardian; or

21 (C) provides services to a ward of the office or
22 public guardian.

23 (d) The Office of Court Administration of the Texas Judicial
24 System shall establish policies and procedures for the exchange of
25 information between offices, public guardians, and other
26 appropriate governmental entities, as necessary for offices,
27 public guardians, and governmental entities to properly execute

1 their respective duties and responsibilities relating to
2 guardianship services or other needed services for a ward. An
3 exchange of information under this subsection does not constitute a
4 release for purposes of waiving the confidentiality of the
5 information exchanged.

6 (e) To the extent consistent with policies and procedures
7 adopted by an office or a public guardian, the office or public
8 guardian on request may release confidential information in the
9 record of an individual who is a former ward of the office or public
10 guardian to:

- 11 (1) the individual;
12 (2) the individual's guardian; or
13 (3) an executor or administrator of the individual's
14 estate.

15 (f) Before releasing confidential information under
16 Subsection (e), an office or a public guardian shall edit the
17 information to protect the identity of any individual whose life or
18 safety may be endangered by the release. A release of information
19 under Subsection (e) does not constitute a release for purposes of
20 waiving the confidentiality of the information released.

21 Sec. 1104.336. CERTAIN ADMINISTRATIVE COSTS. (a) If an
22 office or a public guardian is appointed guardian of the person or
23 of the estate of a ward, or both, the administrative costs of the
24 guardianship services provided to the ward may not be charged to the
25 ward's estate unless the court determines, subject to Subsection
26 (b), that the ward is financially able to pay all or part of the
27 costs.

1 (b) A court shall measure a ward's ability to pay for costs
2 under Subsection (a) by whether the ward has sufficient assets or
3 other resources to pay a private professional guardian to serve as
4 the ward's guardian in accordance with Section 1104.334(b).

5 Sec. 1104.337. COSTS OF GUARDIANSHIP PROCEEDING GENERALLY.
6 Notwithstanding any other law requiring the payment of court costs
7 in a guardianship proceeding and in accordance with Section
8 1155.151(a-2)(5), an office is not required to pay court costs on
9 the filing of or during a guardianship proceeding.

10 Sec. 1104.338. CONTRACT WITH HEALTH AND HUMAN SERVICES
11 COMMISSION TO PROVIDE GUARDIANSHIP SERVICES. A contract under
12 Section 161.103, Human Resources Code, may allow for the provision
13 of guardianship services by an office.

14 Sec. 1104.339. FUNDING USING SUPPLEMENTAL COURT-INITIATED
15 GUARDIANSHIP FEE; MONITORING. (a) Notwithstanding Section
16 118.067, Local Government Code, if a county participates in the
17 pilot program, the "supplemental court-initiated guardianship fee"
18 under Section 118.052(2)(E), Local Government Code, may be used to
19 support guardianship services provided by public guardians.

20 (b) The Office of Court Administration of the Texas Judicial
21 System shall monitor participating counties to ensure money is
22 appropriately used in compliance with this section.

23 Sec. 1104.340. ACCESS TO CRIMINAL HISTORY RECORD
24 INFORMATION; AUTHORITY TO CHARGE FEE. (a) The clerk of a
25 participating county having venue of the proceeding for the
26 appointment of a guardian shall obtain criminal history record
27 information that is maintained by the Department of Public Safety

1 or the Federal Bureau of Investigation identification division and
2 may charge a fee in the manner and amount provided by Section
3 1104.402 relating to:

4 (1) a public guardian appointed under Section
5 1104.327(b);

6 (2) each person who represents or plans to represent
7 the interests of a ward as a guardian on behalf of an office; or

8 (3) each person employed by an office who will:

9 (A) have personal contact with a ward or proposed
10 ward;

11 (B) exercise control over and manage a ward's
12 estate; or

13 (C) perform any duties with respect to the
14 management of a ward's estate.

15 (b) The Department of Public Safety shall provide a report
16 requested under this section to the clerk in the manner provided by
17 Section 411.1386, Government Code.

18 Sec. 1104.341. USE OF CRIMINAL HISTORY RECORD INFORMATION.
19 The court shall use the information obtained under Section 1104.340
20 only in determining whether to appoint, remove, or continue the
21 appointment of an office.

22 Sec. 1104.342. ADDITION TO VERIFICATION OF ACCOUNT AND
23 STATEMENT REGARDING TAXES AND STATUS AS GUARDIAN. In addition to
24 the other requirements of Section 1163.005, an affidavit attached
25 to an account under that section must state whether the public
26 guardian or an individual certified under Subchapter C, Chapter
27 155, Government Code, who is providing guardianship services to the

1 ward and who is swearing to the account on the guardian's behalf, is
2 or has been the subject of an investigation conducted by the
3 Judicial Branch Certification Commission during the accounting
4 period.

5 Sec. 1104.343. GUARDIAN'S AFFIDAVIT ON ANNUAL REPORT. In
6 addition to the other requirements of Section 1163.101(c), an
7 affidavit under that subsection must state whether the public
8 guardian or an individual certified under Subchapter C, Chapter
9 155, Government Code, who is providing guardianship services to the
10 ward and who is filing the affidavit on the guardian's behalf, is or
11 has been the subject of an investigation conducted by the Judicial
12 Branch Certification Commission during the preceding year.

13 Sec. 1104.344. MINIMUM STANDARDS FOR GUARDIANSHIP
14 SERVICES. The Office of Court Administration of the Texas Judicial
15 System shall consult with the Judicial Branch Certification
16 Commission to adopt minimum standards for the provision of
17 guardianship services by offices under the pilot program.

18 Sec. 1104.345. CERTIFICATION OF CERTAIN OFFICE PERSONNEL.
19 An individual who will provide guardianship services to a ward of an
20 office or represent the interests of a ward as a guardian on behalf
21 of a public guardian must hold a certificate issued under
22 Subchapter C, Chapter 155, Government Code.

23 Sec. 1104.346. REPORTS BY OFFICES. Not later than
24 September 1, 2022, each office of public guardian established under
25 the pilot program shall provide to the Office of Court
26 Administration of the Texas Judicial System a report containing:

27 (1) the number of wards served by the office under the

1 pilot program;

2 (2) the total amount of any money received from this
3 state for the provision of guardianship services; and

4 (3) the amount of money received from any other public
5 source, including a participating county or the federal government,
6 for the provision of guardianship services, reported by source, and
7 the total amount of money received from those public sources.

8 Sec. 1104.347. REPORT ON PILOT PROGRAM. (a) Not later than
9 December 1, 2022, the Office of Court Administration of the Texas
10 Judicial System shall submit a report to the governor and the
11 legislature that contains an evaluation of the pilot program,
12 including the establishment and operation of offices of public
13 guardians under the program and the provision of guardianship
14 services by the offices. The report must include:

15 (1) an analysis of costs and offsetting savings or
16 other benefits to the state as a result of the establishment and
17 operation of offices and public guardians under the program; and

18 (2) recommendations for legislation, if any.

19 (b) If it is cost-effective and feasible, the Office of
20 Court Administration of the Texas Judicial System may contract with
21 an appropriate research or public policy entity with expertise in
22 gerontology, disabilities, and public administration to conduct
23 the analysis described by Subsection (a)(1).

24 Sec. 1104.348. RULES. The supreme court, in consultation
25 with the Office of Court Administration of the Texas Judicial
26 System and the presiding judge of the statutory probate courts
27 elected under Section 25.0022, Government Code, shall adopt rules

1 necessary to implement the pilot program.

2 Sec. 1104.349. EXPIRATION. The pilot program terminates and
3 this subchapter expires on September 1, 2023.

4 SECTION 2. Not later than January 1, 2022, the supreme court
5 shall adopt rules necessary to develop and implement the pilot
6 program required by Subchapter G-1, Chapter 1104, Estates Code, as
7 added by this Act, including rules governing:

8 (1) the transfer of a guardianship of the person or of
9 the estate of a ward, or both, if appropriate, to an office of
10 public guardian established under that program or a public guardian
11 contracted under that program; and

12 (2) the transfer or continuation of a guardianship of
13 the person or of the estate of a ward, or both, if appropriate, from
14 an office of public guardian established under the program or a
15 public guardian contracted under the program on the expiration of
16 the program.

17 SECTION 3. This Act takes effect September 1, 2021.