

Amend SB 1624 (house committee report) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber the SECTIONS of the bill accordingly:

SECTION _____. Section 1101.103, Estates Code, is amended to read as follows:

Sec. 1101.103. DETERMINATION OF INCAPACITY OF CERTAIN ADULTS: PHYSICIAN OR PSYCHOLOGIST EXAMINATION. (a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from:

(1) a physician licensed in this state, if the proposed ward's alleged incapacity results from a physical condition or mental condition; or

(2) 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, if the proposed ward's alleged incapacity results from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

(1) have experience examining individuals with the physical or mental condition resulting in the proposed ward's alleged incapacity; or

(2) have an established patient-provider relationship with the proposed ward.

(a-2) The letter or certificate required by Subsection (a) must be [~~that is~~]:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician or psychologist performed not earlier than the 120th day before the date the application is filed.

(b) A [The] letter or certificate from a physician must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

- (A) handle business and managerial matters;
- (B) manage financial matters;
- (C) operate a motor vehicle;
- (D) make personal decisions regarding residence, voting, and marriage; and
- (E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

- (A) has the mental capacity to vote in a public election; and
- (B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

- (A) understand or communicate;
- (B) recognize familiar objects and individuals;
- (C) solve problems;
- (D) reason logically; and
- (E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the

proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

(b-1) Consistent with the scope of practice of a psychologist under Chapter 501, Occupations Code, a letter or certificate from a psychologist must include the information required under Subsection (b) only in relation to the proposed ward's mental capacity.

(c) If the court determines it is necessary, the court may appoint a physician or psychologist [~~the necessary physicians~~] to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's or psychologist's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician or psychologist who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from:

(1) the physician that complies with the requirements of Subsections (a), (a-1), (a-2), and (b); or

(2) the psychologist that complies with the requirements of Subsections (a), (a-1), (a-2), and (b-1).

SECTION ____ . Section 1102.002, Estates Code, is amended to

read as follows:

Sec. 1102.002. ESTABLISHMENT OF PROBABLE CAUSE FOR INVESTIGATION. To establish probable cause under Section 1102.001, the court may require:

(1) an information letter about the person believed to be incapacitated that is submitted by an interested person and satisfies the requirements of Section 1102.003; or

(2) a written letter or certificate from a physician or psychologist who has examined the person believed to be incapacitated that satisfies the requirements of Section 1101.103, except that the letter must be:

(A) dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Section 1102.001; and

(B) based on an examination the physician or psychologist performed not earlier than the 120th day before that date.

SECTION _____. The heading to Section 1202.152, Estates Code, is amended to read as follows:

Sec. 1202.152. [~~PHYSICIAN'S~~] LETTER OR CERTIFICATE REQUIRED.

SECTION _____. Section 573.012, Health and Safety Code, is amended by amending Subsections (a), (e), and (h) and adding Subsections (h-2) and (h-3) to read as follows:

(a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsections [~~Subsection~~] (g) and (h), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(e) A person apprehended under this section who is not physically located in a mental health facility at the time the

warrant is issued under Subsection (h-1) shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(h) A judge or magistrate shall [~~may~~] permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) another secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

(h-2) A facility may detain a person who is physically located in the facility to perform a preliminary examination in accordance with Section 573.021 if:

(1) a judge or magistrate transmits a warrant to the facility under Subsection (h-1) for the detention of the person; and

(2) the person is not under an order under this chapter or Chapter 574.

(h-3) The Office of Court Administration of the Texas Judicial System shall develop and implement a process for an applicant for emergency detention to electronically present the application under Subsection (h) and for a judge or magistrate to electronically transmit a warrant under Subsection (h-1).

SECTION _____. The changes in law made by this Act apply to an emergency detention under Chapter 573, Health and Safety Code,

that begins on or after the effective date of this Act. An emergency detention under Chapter 573, Health and Safety Code, that begins before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION _____. As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall develop the process as required by Section 573.012(h-3), Health and Safety Code, as added by this Act.

(2) In SECTION 16 of the bill, in the transition language, in Subsection (a)(1) of that section (page 20, line 3), strike "guardianship proceeding created" and substitute "guardianship created".

(3) In SECTION 16 of the bill, in the transition language, strike Subsection (a)(2) of that section (page 20, lines 5 and 6) and substitute the following:

(2) a guardianship proceeding that is pending or commenced on or after the effective date of this Act.

(4) In SECTION 16 of the bill, in the transition language, (page 20, between lines 14 and 15), immediately following Subsection (b) of that section, insert the following:

(c) The changes in law made by this Act to Section 1101.103, Estates Code, apply only to an application for the appointment of a guardian that is filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.