

AN ACT

relating to guardianships and services for incapacitated persons and to the emergency detention of certain persons with mental illness.

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, the court shall appoint an attorney ad litem to represent the proposed ward's interests, including the proposed ward's expressed wishes.

SECTION 2. Section 1054.003, Estates Code, is amended to read as follows:

Sec. 1054.003. ACCESS TO RECORDS. An attorney ad litem appointed under Section 1054.001 or an attorney retained by a ward or proposed ward under Section 1054.006 or 1202.103 shall be provided copies of all of the current records in the guardianship case. The attorney ad litem or retained attorney may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.

SECTION 3. Section 1054.006, Estates Code, is amended to read as follows:

Sec. 1054.006. REPRESENTATION OF WARD OR PROPOSED WARD BY

1 ATTORNEY. (a) A ward or proposed ward [~~The following persons~~] may  
2 at any time retain an attorney who holds a certificate required by  
3 Subchapter E to represent the ward's or proposed ward's [~~person's~~]  
4 interests, including the ward's or proposed ward's expressed  
5 wishes, in a guardianship proceeding, including a proceeding  
6 involving the complete restoration of the ward's capacity or  
7 modification of the ward's guardianship, instead of having those  
8 interests represented by an attorney ad litem appointed under  
9 Section [1054.001](#), [Section 1202.101](#), or another provision of this  
10 title[+]

11 [~~(1) a ward who retains the power to enter into a~~  
12 ~~contract under the terms of the guardianship, subject to Section~~  
13 [1202.103](#), and

14 [~~(2) a proposed ward for purposes of a proceeding for~~  
15 ~~the appointment of a guardian as long as the proposed ward has~~  
16 ~~capacity to contract].~~

17 (b) Subject to Subsection (c), if a ward or proposed ward  
18 has retained an attorney under Subsection (a), [~~If~~] the court shall  
19 [~~finds that the ward or the proposed ward has capacity to contract,~~  
20 ~~the court may~~] remove an attorney ad litem appointed under Section  
21 [1054.001](#), [Section 1202.101](#), or any other provision of this title  
22 that requires the court to appoint an attorney ad litem to represent  
23 the interests of a ward or proposed ward and appoint a ward or a  
24 proposed ward's retained counsel.

25 (c) On the motion of a party to a guardianship proceeding or  
26 on the court's own motion, the court may hold a hearing on the ward's  
27 or proposed ward's capacity to retain an attorney under Subsection

1 (a). The burden of proof is on the party motioning the court. If  
2 the court finds by a preponderance of evidence that the ward or  
3 proposed ward does not understand the guardianship proceeding or  
4 the purpose for which the attorney was retained, the court may  
5 appoint an attorney ad litem under Section 1054.001, Section  
6 1202.101, or another provision of this title.

7 (d) An attorney retained by a ward or proposed ward under  
8 this section must represent the ward's or proposed ward's  
9 interests, including the ward's or proposed ward's expressed  
10 wishes.

11 SECTION 4. Section 1054.007, Estates Code, is amended by  
12 adding Subsection (c) to read as follows:

13 (c) An attorney ad litem appointed for a ward or proposed  
14 ward under this title shall represent the ward's or proposed ward's  
15 interests, including the ward's or proposed ward's expressed  
16 wishes.

17 SECTION 5. Section 1054.051, Estates Code, is amended to  
18 read as follows:

19 Sec. 1054.051. APPOINTMENT OF GUARDIAN AD LITEM IN  
20 GUARDIANSHIP PROCEEDING. (a) Subject to Subsection (b), the [The]  
21 judge may appoint a guardian ad litem to represent the interests of  
22 an incapacitated person in a guardianship proceeding.

23 (b) A person appointed as a guardian ad litem may not be:

24 (1) an interested person, as defined by Section  
25 1002.018(1); or

26 (2) an attorney ad litem appointed for the  
27 guardianship proceeding except as provided by Section 1054.052,

1 1202.101, or 1203.051.

2 SECTION 6. Subchapter D, Chapter 1054, Estates Code, is  
3 amended by adding Section 1054.157 to read as follows:

4 Sec. 1054.157. REQUIRED TRAINING. At least once every two  
5 years, a court investigator and a court visitor shall complete two  
6 hours of training, including one hour of training on alternatives  
7 to guardianship and supports and services available to a proposed  
8 ward in accordance with Section 22.0133, Government Code.

9 SECTION 7. Section 1101.103, Estates Code, is amended to  
10 read as follows:

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

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

22 (2) a psychologist licensed in this state or certified  
23 by the Health and Human Services Commission to perform the  
24 examination, in accordance with rules adopted by the executive  
25 commissioner of the commission governing examinations of that kind,  
26 if the proposed ward's alleged incapacity results from a mental  
27 condition.

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

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

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

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

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

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

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

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

19                    (A) handle business and managerial matters;

20                    (B) manage financial matters;

21                    (C) operate a motor vehicle;

22                    (D) make personal decisions regarding residence,  
23 voting, and marriage; and

24                    (E) consent to medical, dental, psychological,  
25 or psychiatric treatment;

26            (2) in providing a description under Subdivision (1)  
27 regarding the proposed ward's ability to operate a motor vehicle

1 and make personal decisions regarding voting, state whether in the  
2 physician's opinion the proposed ward:

3 (A) has the mental capacity to vote in a public  
4 election; and

5 (B) has the ability to safely operate a motor  
6 vehicle;

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

10 (3-a) in providing an evaluation under Subdivision  
11 (3), state whether improvement in the proposed ward's physical  
12 condition and mental functioning is possible and, if so, state the  
13 period after which the proposed ward should be reevaluated to  
14 determine whether a guardianship continues to be necessary;

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

19 (A) understand or communicate;

20 (B) recognize familiar objects and individuals;

21 (C) solve problems;

22 (D) reason logically; and

23 (E) administer to daily life activities with and  
24 without supports and services;

25 (5) state whether any current medication affects the  
26 proposed ward's demeanor or the proposed ward's ability to  
27 participate fully in a court proceeding;

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

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

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

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

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

26           (d) A physician or psychologist who examines the proposed  
27 ward, other than a physician or psychologist who examines the

1 proposed ward under Section 1101.104(2), shall make available for  
2 inspection by the attorney ad litem appointed to represent the  
3 proposed ward a written letter or certificate from:

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

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

8 SECTION 8. Section 1102.002, Estates Code, is amended to  
9 read as follows:

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

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

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

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

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

26 SECTION 9. Section 1151.351(b), Estates Code, is amended to  
27 read as follows:



1 (b) Unless limited by a court or otherwise restricted by  
2 law, a ward is authorized to the following:

3 (1) to have a copy of the guardianship order and  
4 letters of guardianship and contact information for the probate  
5 court that issued the order and letters;

6 (2) to have a guardianship that encourages the  
7 development or maintenance of maximum self-reliance and  
8 independence in the ward with the eventual goal, if possible, of  
9 self-sufficiency;

10 (3) to be treated with respect, consideration, and  
11 recognition of the ward's dignity and individuality;

12 (4) to reside and receive support services in the most  
13 integrated setting, including home-based or other community-based  
14 settings, as required by Title II of the Americans with  
15 Disabilities Act (42 U.S.C. Section 12131 et seq.);

16 (5) to consideration of the ward's current and  
17 previously stated personal preferences, desires, medical and  
18 psychiatric treatment preferences, religious beliefs, living  
19 arrangements, and other preferences and opinions;

20 (6) to financial self-determination for all public  
21 benefits after essential living expenses and health needs are met  
22 and to have access to a monthly personal allowance;

23 (7) to receive timely and appropriate health care and  
24 medical treatment that does not violate the ward's rights granted  
25 by the constitution and laws of this state and the United States;

26 (8) to exercise full control of all aspects of life not  
27 specifically granted by the court to the guardian;

1           (9) to control the ward's personal environment based  
2 on the ward's preferences;

3           (10) to complain or raise concerns regarding the  
4 guardian or guardianship to the court, including living  
5 arrangements, retaliation by the guardian, conflicts of interest  
6 between the guardian and service providers, or a violation of any  
7 rights under this section;

8           (11) to receive notice in the ward's native language,  
9 or preferred mode of communication, and in a manner accessible to  
10 the ward, of a court proceeding to continue, modify, or terminate  
11 the guardianship and the opportunity to appear before the court to  
12 express the ward's preferences and concerns regarding whether the  
13 guardianship should be continued, modified, or terminated;

14           (12) to have a court investigator or guardian ad litem  
15 appointed by the court to investigate a complaint received by the  
16 court from the ward or any person about the guardianship;

17           (13) to participate in social, religious, and  
18 recreational activities, training, employment, education,  
19 habilitation, and rehabilitation of the ward's choice in the most  
20 integrated setting;

21           (14) to self-determination in the substantial  
22 maintenance, disposition, and management of real and personal  
23 property after essential living expenses and health needs are met,  
24 including the right to receive notice and object about the  
25 substantial maintenance, disposition, or management of clothing,  
26 furniture, vehicles, and other personal effects;

27           (15) to personal privacy and confidentiality in

1 personal matters, subject to state and federal law;

2 (16) to unimpeded, private, and uncensored  
3 communication and visitation with persons of the ward's choice,  
4 except that if the guardian determines that certain communication  
5 or visitation causes substantial harm to the ward:

6 (A) the guardian may limit, supervise, or  
7 restrict communication or visitation, but only to the extent  
8 necessary to protect the ward from substantial harm; and

9 (B) the ward may request a hearing to remove any  
10 restrictions on communication or visitation imposed by the guardian  
11 under Paragraph (A);

12 (17) to petition the court and retain counsel of the  
13 ward's choice who holds a certificate required by Subchapter E,  
14 Chapter 1054, to represent the ward's interest for capacity  
15 restoration, modification of the guardianship, the appointment of a  
16 different guardian, or for other appropriate relief under this  
17 subchapter, including a transition to a supported decision-making  
18 agreement, except as limited by Section 1054.006;

19 (18) to vote in a public election, marry, and retain a  
20 license to operate a motor vehicle, unless restricted by the court;

21 (19) to personal visits from the guardian or the  
22 guardian's designee at least once every three months, but more  
23 often, if necessary, unless the court orders otherwise;

24 (20) to be informed of the name, address, phone  
25 number, and purpose of Disability Rights Texas, an organization  
26 whose mission is to protect the rights of, and advocate for, persons  
27 with disabilities, and to communicate and meet with representatives

1 of that organization;

2 (21) to be informed of the name, address, phone  
3 number, and purpose of an independent living center, an area agency  
4 on aging, an aging and disability resource center, and the local  
5 mental health and intellectual and developmental disability  
6 center, and to communicate and meet with representatives from these  
7 agencies and organizations;

8 (22) to be informed of the name, address, phone  
9 number, and purpose of the Judicial Branch Certification Commission  
10 and the procedure for filing a complaint against a certified  
11 guardian;

12 (23) to contact the Department of Family and  
13 Protective Services to report abuse, neglect, exploitation, or  
14 violation of personal rights without fear of punishment,  
15 interference, coercion, or retaliation;

16 (24) to have the guardian, on appointment and on  
17 annual renewal of the guardianship, explain the rights delineated  
18 in this subsection in the ward's native language, or preferred mode  
19 of communication, and in a manner accessible to the ward; ~~and~~

20 (25) to make decisions related to sexual assault  
21 crisis services, including consenting to a forensic medical  
22 examination and treatment, authorizing the collection of forensic  
23 evidence, consenting to the release of evidence contained in an  
24 evidence collection kit and disclosure of related confidential  
25 information, and receiving counseling and other support services;  
26 and

27 (26) to have private communications with the ward's

1 physicians or other medical professionals, unless the court, after  
2 a hearing requested by the ward's guardian, orders the private  
3 communications to be limited due to:

- 4                   (A) the risk of substantial harm to the ward; or  
5                   (B) the communications being unduly burdensome  
6 to the physician or medical professional.

7           SECTION 10. Section 1163.101, Estates Code, is amended by  
8 amending Subsection (c) and adding Subsection (d) to read as  
9 follows:

10           (c) The guardian of the person shall file a sworn affidavit  
11 that contains:

12                   (1) the guardian's current name, address, and  
13 telephone number;

14                   (2) the ward's date of birth and current name, address,  
15 telephone number, and age;

16                   (3) a description of the type of home in which the ward  
17 resides, which shall be described as:

- 18                           (A) the ward's own home;
- 19                           (B) a nursing home;
- 20                           (C) a guardian's home;
- 21                           (D) a foster home;
- 22                           (E) a boarding home;
- 23                           (F) a relative's home, in which case the  
24 description must specify the relative's relationship to the ward;
- 25                           (G) a hospital or medical facility; or
- 26                           (H) another type of residence;

27                   (4) statements indicating:

1 (A) the length of time the ward has resided in the  
2 present home;

3 (B) the reason for a change in the ward's  
4 residence, if a change in the ward's residence has occurred in the  
5 past year;

6 (C) the date the guardian most recently saw the  
7 ward;

8 (D) how frequently the guardian has seen the ward  
9 in the past year;

10 (E) whether the guardian has possession or  
11 control of the ward's estate;

12 (F) whether the ward's mental health has  
13 improved, deteriorated, or remained unchanged during the past year,  
14 including a description of the change if a change has occurred;

15 (G) whether the ward's physical health has  
16 improved, deteriorated, or remained unchanged during the past year,  
17 including a description of the change if a change has occurred;

18 (H) whether the ward has regular medical care;

19 [~~and~~]

20 (I) the ward's treatment or evaluation by any of  
21 the following persons during the past year, including the person's  
22 name and a description of the treatment:

23 (i) a physician;

24 (ii) a psychiatrist, psychologist, or other  
25 mental health care provider;

26 (iii) a dentist;

27 (iv) a social or other caseworker; or

1 (v) any other individual who provided  
2 treatment; and

3 (J) supports and services the ward has received  
4 or is currently receiving, as described by Subsection (d);

5 (5) a description of the ward's activities during the  
6 past year, including recreational, educational, social, and  
7 occupational activities, or a statement that no activities were  
8 available or that the ward was unable or refused to participate in  
9 activities;

10 (6) the guardian's evaluation of:

11 (A) the ward's living arrangements as excellent,  
12 average, or below average, including an explanation if the  
13 conditions are below average;

14 (B) whether the ward is content or unhappy with  
15 the ward's living arrangements; and

16 (C) unmet needs of the ward;

17 (7) a statement indicating whether the guardian's  
18 power should be increased, decreased, or unaltered, including an  
19 explanation if a change is recommended;

20 (8) a statement indicating that the guardian has paid  
21 the bond premium for the next reporting period;

22 (9) if the guardian is a private professional  
23 guardian, a guardianship program, or the Health and Human Services  
24 Commission, whether the guardian or an individual certified under  
25 Subchapter C, Chapter 155, Government Code, who is providing  
26 guardianship services to the ward and who is filing the affidavit on  
27 the guardian's behalf, is or has been the subject of an

1 investigation conducted by the Judicial Branch Certification  
2 Commission during the preceding year; and

3 (10) any additional information the guardian desires  
4 to share with the court regarding the ward, including:

5 (A) whether the guardian has filed for emergency  
6 detention of the ward under Subchapter A, Chapter 573, Health and  
7 Safety Code; and

8 (B) if applicable, the number of times the  
9 guardian has filed for emergency detention and the dates of the  
10 applications for emergency detention.

11 (d) The statements in the sworn affidavit regarding the  
12 ward's supports and services under Subsection (c)(4)(J) must  
13 include:

14 (1) information regarding actions the guardian is  
15 taking to encourage the development of the ward's maximum  
16 self-reliance and independence;

17 (2) a list of all the supports and services the ward is  
18 currently receiving, including whether the ward:

19 (A) has a representative payee;

20 (B) receives services from a local mental health  
21 authority or local intellectual and developmental disability  
22 authority;

23 (C) receives any supports and services under  
24 Medicaid, including under a Medicaid waiver program authorized  
25 under Section 1915(c) of the federal Social Security Act (42 U.S.C.  
26 Section 1396n); and

27 (D) receives any supports and services



1 informally;

2 (3) where the ward receives the supports and services  
3 described by Subdivision (2);

4 (4) who provides the supports and services described  
5 by Subdivision (2);

6 (5) a list of the supports and services the ward  
7 previously received or attempted to receive and why the support or  
8 service was discontinued or not received; and

9 (6) the guardian's opinion on whether the ward has the  
10 capacity or sufficient capacity with supports and services for  
11 complete restoration of the ward's capacity or modification of the  
12 guardianship under Chapter 1202 or the reasons why the ward does not  
13 have the capacity or sufficient capacity with supports and services  
14 for complete restoration of the ward's capacity or modification of  
15 the guardianship under Chapter 1202.

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

18 Sec. 1201.052. ANNUAL DETERMINATION; HEARING. (a) To  
19 determine whether a guardianship should be continued, modified, or  
20 terminated, the court in which the guardianship proceeding is  
21 pending:

22 (1) shall review annually each guardianship in which  
23 the application to create the guardianship was filed after  
24 September 1, 1993; and

25 (2) may review annually any other guardianship.

26 (b) A court in which the guardianship proceeding is pending  
27 may conduct a hearing under this section.

1 SECTION 12. Section 1201.053, Estates Code, is amended to  
2 read as follows:

3 Sec. 1201.053. METHOD OF DETERMINATION. (a) In reviewing a  
4 guardianship under Section 1201.052, a statutory probate court  
5 shall review any ~~may~~:

6 (1) ~~[review any]~~ report prepared by:

7 (A) a court investigator under Section 1054.153  
8 or 1202.054;

9 (B) a guardian ad litem under Section 1202.054;

10 or

11 (C) a court visitor under Section 1054.104;

12 (2) ~~[conduct a hearing; or~~

13 ~~[(3) review an]~~ annual account prepared under  
14 Subchapter A, Chapter 1163; and

15 (3) ~~[, or a]~~ report prepared under Subchapter C,  
16 Chapter 1163.

17 (a-1) Unless a court orders that a report be completed more  
18 frequently, if a report described by Subsection (a)(1) is required  
19 under Section 1054.153 or 1054.104, the court investigator or court  
20 visitor, as appropriate, shall prepare an additional report  
21 described by Subsection (a)(1) every three years beginning on the  
22 date the original letters of guardianship are issued.

23 (a-2) Before preparing an additional report under  
24 Subsection (a-1), the court investigator or court visitor, as  
25 appropriate, shall:

26 (1) meet with the ward in person, using necessary and  
27 appropriate communication supports;

1           (2) present the bill of rights for wards under Section  
2 1151.351 to the ward in the ward's preferred language and manner of  
3 communication;

4           (3) document the ward's statement of guardianship, as  
5 described by Subsection (a-3); and

6           (4) document the supports and services currently  
7 available to the ward and whether the guardian's rights and powers  
8 can be limited because a less restrictive alternative to  
9 guardianship is appropriate.

10          (a-3) The ward's statement of guardianship:

11           (1) must include:

12                   (A) whether the ward desires a full restoration  
13 of the ward's capacity or modification of the ward's guardianship;  
14 and

15                   (B) any other information the ward wishes to  
16 share with the court; and

17           (2) may be in the form of:

18                   (A) a written statement made by the ward and  
19 filed with the court by the court investigator or court visitor  
20 preparing the report;

21                   (B) a verbal statement made to the court  
22 investigator or court visitor, as applicable, that is documented in  
23 writing and filed with the court by the person receiving the  
24 statement; or

25                   (C) a verbal or written statement made by the  
26 ward during a hearing either in person or remotely through other  
27 means.

1 (b) A court that is not a statutory probate court:

2 (1) shall review:

3 (A) any account prepared under Subchapter A,  
4 Chapter 1163; and

5 (B) any report prepared under Subchapter C,  
6 Chapter 1163 or Subsection (a-1); and

7 (2) may use any other method to review a guardianship  
8 under Section 1201.052 that is determined appropriate by the court  
9 according to the court's caseload and available resources.

10 SECTION 13. Section 1202.101, Estates Code, is amended to  
11 read as follows:

12 Sec. 1202.101. APPOINTMENT OF ATTORNEY AD LITEM. (a)  
13 Unless the ward retains an attorney under Section 1202.103, the  
14 [The] court shall appoint an attorney ad litem to represent a ward  
15 in a proceeding for the complete restoration of the ward's capacity  
16 or for the modification of the ward's guardianship. Unless  
17 otherwise provided by the court, the attorney ad litem shall  
18 represent the ward only for purposes of the restoration or  
19 modification proceeding. The attorney ad litem shall represent the  
20 ward's interests, including the ward's expressed wishes.

21 (b) The attorney ad litem has an attorney-client  
22 relationship with the ward the attorney ad litem is appointed to  
23 represent under this section.

24 SECTION 14. The heading to Section 1202.152, Estates Code,  
25 is amended to read as follows:

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

1 SECTION 15. Section [1202.152](#), Estates Code, is amended by  
2 amending Subsections (a) and (c) and adding Subsections (a-1),  
3 (a-2), and (a-3) to read as follows:

4 (a) Subject to Section 1202.1521, the applicant must  
5 present to the court and the [The] court shall consider a written  
6 letter or certificate as evidence of capacity, or sufficient  
7 capacity with supports and services, at a hearing under Section  
8 1202.151 from:

9 (1) a physician licensed in this state, if the ward's  
10 incapacity resulted from a physical condition or mental condition;  
11 or

12 (2) a psychologist licensed in this state or certified  
13 by the Health and Human Services Commission to perform the  
14 examination, in accordance with rules adopted by the executive  
15 commissioner of the commission governing examinations of that kind,  
16 if the ward's incapacity resulted from a mental condition.

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

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

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

23 (a-2) The letter or certificate required by Subsection (a)  
24 must be:

25 (1) signed by the physician or psychologist; and

26 (2) dated:

27 (A) not earlier than the 120th day before the

1 date the application was filed; or

2 (B) after the date the application was filed but  
3 before the date of the hearing.

4 (a-3) The court may consider the following evidence of  
5 capacity, or sufficient capacity with supports and services, at a  
6 hearing under Section 1202.151:

7 (1) a statement from a representative of the local  
8 mental health authority or the local intellectual and developmental  
9 disability authority listing services received by the ward and the  
10 effectiveness of those services;

11 (2) medical records;

12 (3) affidavits of treating professionals regarding  
13 the effectiveness of supports and services the ward is receiving;

14 (4) documentation from a health care provider  
15 providing supports or services to the ward under Medicaid,  
16 including a Medicaid waiver program authorized under Section  
17 1915(c) of the federal Social Security Act (42 U.S.C. Section  
18 1396n);

19 (5) an affidavit of the ward's employer or day  
20 habilitation program manager regarding the ward's ability to  
21 perform the necessary tasks;

22 (6) documentation from the United States Social  
23 Security Administration identifying the ward's representative  
24 payee; or

25 (7) any other evidence demonstrating the ward's  
26 capacity ~~[may not grant an order completely restoring a ward's~~  
27 ~~capacity or modifying a ward's guardianship under an application~~

1 ~~filed under Section 1202.051 unless the applicant presents to the~~  
2 ~~court a written letter or certificate from a physician licensed in~~  
3 ~~this state that is dated:~~

4 ~~[(1) not earlier than the 120th day before the date the~~  
5 ~~application was filed; or~~

6 ~~[(2) after the date the application was filed but~~  
7 ~~before the date of the hearing].~~

8       (c) If the court determines it is necessary, the court shall  
9 ~~[may]~~ appoint a physician or psychologist to complete an  
10 examination of the ward. The physician or psychologist must be  
11 chosen by the ward, provided, however, that if the ward makes no  
12 choice, the ward's physician or psychologist of choice is not  
13 available, or additional information is needed or required after an  
14 examination by the ward's physician or psychologist of choice, the  
15 court may appoint the necessary physicians or psychologists to  
16 examine the ward. A physician appointed by the court must examine  
17 the ward in the same manner and to the same extent as a ward is  
18 examined by a physician under Section 1101.103 or 1101.104.

19       SECTION 16. Subchapter D, Chapter 1202, Estates Code, is  
20 amended by adding Section 1202.1521 to read as follows:

21       Sec. 1202.1521. PHYSICIAN'S LETTER OR CERTIFICATE:  
22 REQUIREMENT IF ALLEGED INCAPACITY BASED ON INTELLECTUAL  
23 DISABILITY. If an intellectual disability is the basis of a ward's  
24 alleged incapacity, the written letter or certificate presented  
25 under Section 1202.152(a), instead of containing the information  
26 required by Section 1202.152(b), must:

27       (1) state, in the physician's or psychologist's

1 opinion, whether the ward has the capacity, or sufficient capacity  
2 with supports and services, to do any of the activities listed in  
3 Section 1202.152(b)(1);

4 (2) state how or in what manner the ward's ability to  
5 make or communicate reasonable decisions concerning himself or  
6 herself is affected by the ward's mental capacity; and

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

9 SECTION 17. Subchapter A, Chapter 22, Government Code, is  
10 amended by adding Section 22.0133 to read as follows:

11 Sec. 22.0133. JUDICIAL, COURT INVESTIGATOR, AND COURT  
12 VISITOR TRAINING RELATED TO GUARDIANSHIPS. The supreme court, in  
13 consultation with the Judicial Branch Certification Commission,  
14 shall ensure that at least one hour of training related to  
15 alternatives to guardianships and supports and services that are  
16 available to a proposed ward is provided to each judge with  
17 jurisdiction to hear a guardianship proceeding, each court  
18 investigator appointed under Section 1054.156, Estates Code, and  
19 each court visitor appointed under Section 1054.103, Estates Code,  
20 at least once every two years.

21 SECTION 18. Section 573.012, Health and Safety Code, is  
22 amended by amending Subsections (a), (e), and (h) and adding  
23 Subsections (h-2) and (h-3) to read as follows:

24 (a) Except as provided by Subsection (h), an applicant for  
25 emergency detention must present the application personally to a  
26 judge or magistrate. The judge or magistrate shall examine the  
27 application and may interview the applicant. Except as provided by



1 Subsections [~~Subsection~~] (g) and (h), the judge of a court with  
2 probate jurisdiction by administrative order may provide that the  
3 application must be:

- 4 (1) presented personally to the court; or
- 5 (2) retained by court staff and presented to another  
6 judge or magistrate as soon as is practicable if the judge of the  
7 court is not available at the time the application is presented.

8 (e) A person apprehended under this section who is not  
9 physically located in a mental health facility at the time the  
10 warrant is issued under Subsection (h-1) shall be transported for a  
11 preliminary examination in accordance with Section 573.021 to:

- 12 (1) the nearest appropriate inpatient mental health  
13 facility; or
- 14 (2) a mental health facility deemed suitable by the  
15 local mental health authority, if an appropriate inpatient mental  
16 health facility is not available.

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

- 19 (1) e-mail with the application attached as a secure  
20 document in a portable document format (PDF); or
- 21 (2) another secure electronic means, including:
  - 22 (A) satellite transmission;
  - 23 (B) closed-circuit television transmission; or
  - 24 (C) any other method of two-way electronic  
25 communication that:
    - 26 (i) is secure;
    - 27 (ii) is available to the judge or

1 magistrate; and

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

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

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

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

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

18 SECTION 19. Sections 1202.054(b-1) and (d), Estates Code,  
19 are repealed.

20 SECTION 20. (a) Except as otherwise provided by this  
21 section, the changes in law made by this Act apply to:

22 (1) a guardianship created before, on, or after the  
23 effective date of this Act; and

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

26 (b) The changes in law made by this Act to Section 1202.152,  
27 Estates Code, apply only to a proceeding for the complete

1 restoration of capacity or modification of a guardianship commenced  
2 on or after the effective date of this Act. A proceeding described  
3 by this section commenced before the effective date of this Act is  
4 governed by the law in effect on the date the proceeding was  
5 commenced, and the former law is continued in effect for that  
6 purpose.

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

13 SECTION 21. (a) Not later than December 1, 2023, the Texas  
14 Supreme Court shall adopt the rules necessary to provide the  
15 training required under Section 22.0133, Government Code, as added  
16 by this Act.

17 (b) Notwithstanding Section 22.0133, Government Code, as  
18 added by this Act, a judge who is in office on the effective date of  
19 this Act or a court investigator or court visitor described by  
20 Section 22.0133, Government Code, as added by this Act, who is  
21 appointed on or before the effective date of this Act must complete  
22 the training required by Section 22.0133, Government Code, as added  
23 by this Act, not later than December 1, 2025.

24 SECTION 22. The changes in law made by this Act apply to an  
25 emergency detention under Chapter 573, Health and Safety Code, that  
26 begins on or after the effective date of this Act. An emergency  
27 detention under Chapter 573, Health and Safety Code, that begins

1 before the effective date of this Act is governed by the law as it  
2 existed immediately before that date, and that law is continued in  
3 effect for that purpose.

4         SECTION 23. As soon as practicable after the effective date  
5 of this Act, the Office of Court Administration of the Texas  
6 Judicial System shall develop the process as required by Section  
7 [573.012\(h-3\)](#), Health and Safety Code, as added by this Act.

8         SECTION 24. This Act takes effect September 1, 2023.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1624 passed the Senate on May 2, 2023, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2023, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1624 passed the House, with amendment, on May 24, 2023, by the following vote: Yeas 134, Nays 4, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor