

Guardianship Changes 2015

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Access to Ward HB 2665

- a relative of a ward, upon personal service on the guardian (21 d notice) and a hearing (within 60 days unless ward's health in significant decline or death is imminent, then in 10 days) , may petition for access to the ward for visitation and communication.

- The court may prohibit the guardian from preventing access to the ward after considering any prior protective orders issued against the applicant, and whether visitation should be limited or denied.

- Court costs and attorney's fees may be awarded the prevailing party. Ward's estate is not to bear the costs.

Sec. 1151.055. APPLICATION BY CERTAIN RELATIVES FOR ACCESS TO WARD; HEARING AND COURT ORDER.

- (a) This section applies to a relative described under Sections 1101.001(b)(13)(A)-(D).
- (b) A relative of a ward may file an application with the court requesting access to the ward, including the opportunity to establish visitation or communication with the ward.
- (c) Except as provided by Subsection (d), the court shall schedule a hearing on the application not later than the 60th day after the date an application is filed under Subsection (b). The court may grant a continuance of a hearing under this section for good cause.
- (d) If an application under Subsection (b) states that the ward's health is in significant decline or that the ward's death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but not later than the 10th day after the date the application is filed under Subsection (b).
- (e) The guardian of a ward with respect to whom an application is filed under Subsection (b) shall be personally served with a copy of the application and cited to appear at a hearing under:
 - (1) Subsection (c) at least 21 days before the date of the hearing; and
 - (2) Subsection (d) as soon as practicable.
- (f) The court shall issue an order after notice and a hearing under this section. An order issued under this section may:
 - (1) prohibit the guardian of a ward from preventing the applicant access to the ward if the applicant shows by a preponderance of the evidence that:
 - (A) the guardian's past act or acts prevented access to the ward; and
 - (B) the ward desires contact with the applicant; and
 - (2) specify the frequency, time, place, location, and any other terms of access.
- (g) In deciding whether to issue or modify an order issued under this section, the court:
 - (1) shall consider:
 - (A) whether any protective orders have been issued against the applicant to protect the ward;
 - (B) whether a court or other state agency has found that the applicant abused, neglected, or exploited the ward; and
 - (C) the best interest of the ward; and
 - (2) may consider whether:
 - (A) visitation by the applicant should be limited to situations in which a third person, specified by the court, is present; or
 - (B) visitation should be suspended or denied.
- (h) The court may, in its discretion, award the prevailing party in any action brought under this section court costs and attorney's fees, if any. Court costs or attorney's fees awarded under this subsection may not be paid from the ward's estate. HB2665

Accountings & Reports

- Initial Accounting of Management Trustee where application for guardianship is still pending.

Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED.

- (a) This section applies only to a trustee of a management trust created for a person who [for whom a guardianship proceeding is pending] on the date the trust is created is:
 - (1) a ward under an existing guardianship; or
 - (2) a proposed ward with respect to whom an application for guardianship has been filed and is pending.

- (b) Not later than the 30th day after the date a trustee to which this section applies receives property into the trust, the trustee shall file with the court that created the guardianship or the court in which the application for guardianship was filed [~~proceeding is pending~~] a report describing all property held in the trust on the date of the report and specifying the value of the property on that date. HB1438 §22

Guardian of the Person Report - Unsworn Declaration - HB 3137 (Naishtat) clarifies language relating to the use of an unsworn declaration on the annual report.

SECTION 16. Section 1163.101(c), Estates Code, is amended to read as follows:

- (c) The guardian of the person shall file a sworn affidavit that contains:
- (1) the guardian's current name, address, and telephone number;
 - (2) the ward's date of birth and current name, address, telephone number, and age;
 - (3) a description of the type of home in which the ward resides, which shall be described as:
 - (A) the ward's own home;
 - (B) a nursing home;
 - (C) a guardian's home;
 - (D) a foster home;
 - (E) a boarding home;
 - (F) a relative's home, in which case the description must specify the relative's relationship to the ward;
 - (G) a hospital or medical facility; or
 - (H) another type of residence;
 - (4) statements indicating:
 - (A) the length of time the ward has resided in the present home;
 - (B) the reason for a change in the ward's residence, if a change in the ward's residence has occurred in the past year;
 - (C) the date the guardian most recently saw the ward;
 - (D) how frequently the guardian has seen the ward in the past year;
 - (E) whether the guardian has possession or control of the ward's estate;
 - (F) whether the ward's mental health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;
 - (G) whether the ward's physical health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;
 - (H) whether the ward has regular medical care; and
 - (I) the ward's treatment or evaluation by any of the following persons during the past year, including the person's name and a description of the treatment:
 - (i) a physician;
 - (ii) a psychiatrist, psychologist, or other mental health care provider;
 - (iii) a dentist;
 - (iv) a social or other caseworker; or
 - (v) any other individual who provided treatment;
 - (5) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or a statement that no activities were available or that the ward was unable or refused to participate in activities;
 - (6) the guardian's evaluation of:
 - (A) the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;
 - (B) whether the ward is content or unhappy with the ward's living arrangements; and
 - (C) unmet needs of the ward;
 - (7) a statement indicating whether the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;
 - (8) a statement indicating that the guardian has paid the bond premium for the next reporting period;
 - (9) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 155 [~~144~~], Government Code, who is providing guardianship services to the ward and who is filing

- [swearing to] the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the preceding year; and
- (10) any additional information the guardian desires to share with the court regarding the ward, including:
- (A) whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and
 - (B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.

Sec. 1163.1011. USE OF UNSWORN DECLARATION IN LIEU OF SWORN DECLARATION OR AFFIDAVIT FOR [ELECTRONIC] FILING [OF] ANNUAL REPORT.

- (a) A guardian of the person who is required to file an [files the] annual report under [required by] Section 1163.101 [electronically] with the court, including a guardian filing the annual report electronically, may use an unsworn declaration made as provided by this section instead of the [a written] sworn declaration or affidavit required by Section 1163.101. HB1438 §§16, 17, 18

Receipt for property in Predecessor's possession

SECTION 19. Section 1203.202(c), Estates Code, is amended to read as follows:

- (c) A successor guardian may:
- (1) make himself or herself, and be made, a party to a suit prosecuted by or against the successor's predecessor;
 - (2) settle with the predecessor and receive and give a receipt for any portion of the estate property that remains in the predecessor's [successor's] possession; or
 - (3) commence a suit on the bond or bonds of the predecessor, in the successor's own name and capacity, for all the estate property that:
 - (A) came into the predecessor's possession; and
 - (B) has not been accounted for by the predecessor. HB1438 §19

Ad Litem

- **GAL or AAL may apply for sale of minor's interest in property** without guardianship if no parent or managing conservator HB1438, §§ 23-27

Sec. 1351.001. **AUTHORITY TO SELL MINOR'S INTEREST IN PROPERTY WITHOUT GUARDIANSHIP.**

- (a) A parent or managing conservator of a minor who is not a ward may apply to the court under this subchapter for an order to sell an interest of the minor in property without being appointed guardian if the net value of the interest does not exceed \$100,000.
- (b) If a minor who is not a ward does not have a parent or managing conservator willing or able to file an application under Subsection (a), the court may appoint an attorney ad litem or guardian ad litem to act on the minor's behalf for the limited purpose of applying for an order to sell the minor's interest in property under this subchapter.

SECTION 24. Sections 1351.002(a) and (b), Estates Code, are amended to read as follows:

- (a) A parent, ~~[or]~~ managing conservator, or attorney ad litem or guardian ad litem appointed under Section 1351.001(b) shall apply to the court under oath for the sale of property under this subchapter.
- (b) An application must contain:
- (1) the minor's name;
 - (2) a legal description of the real property or a description that identifies the personal property, as applicable;
 - (3) the minor's interest in the property;
 - (4) the purchaser's name;
 - (5) a statement that the sale of the minor's interest in the property is for cash; and
 - (6) a statement that all money received from the sale of the minor's interest in the property [~~by the parent or managing conservator~~] shall be used for the minor's use and benefit.

Sec. 1351.051. **APPLICABILITY OF SUBCHAPTER.** This subchapter applies only to a ward who has:

- (1) a guardian of the person but does not have a guardian of the estate; or
- (2) a guardian of the person or estate appointed by a foreign court.

- **Appointment of Ad Litem to Sell Ward's Property Without Guardianship** for wards with a foreign guardian. HB1438, §§ 23-27

Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS STATE. A guardian of the person of a ward or a guardian of the person or estate of a ward appointed by a foreign court may apply to the court under this subchapter for an order to sell an interest in property in the ward's estate without being appointed guardian of the ward's estate in this state if the net value of the interest does not exceed \$100,000.

SECTION 27. Section 1351.053(b), Estates Code, is amended to read as follows:

- (b) For purposes of Subsection (a)(2), references in Section 1351.002(b) to [~~+~~] "minor" are replaced with references to "ward." [~~"ward"; and~~ [~~2~~] "~~parent or managing conservator~~" are replaced with references to "guardian of the person."] HB1438, §§ 23-27

Duties of Attorney ad Litem

Section 1054.004, Estates Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

- (a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:
 - (1) the law and facts of the case;
 - (2) the proposed ward's legal options regarding disposition of the case; [~~and~~]
 - (3) the grounds on which guardianship is sought; and
 - (4) whether alternatives to guardianship would meet the needs of the proposed ward and avoid the need for the appointment of a guardian.
- (c) Before the hearing, the attorney ad litem shall discuss with the proposed ward the attorney ad litem's opinion regarding:
 - (1) whether a guardianship is necessary for the proposed ward; and
 - (2) if a guardianship is necessary, the specific powers or duties of the guardian that should be limited if the proposed ward receives supports and services. HB39, §4

Duties of Guardian Ad Litem

Section 1054.054, Estates Code, is amended by adding Subsections (c) and (d) to read as follows:

- (c) The guardian ad litem shall:
 - (1) investigate whether a guardianship is necessary for the proposed ward; and
 - (2) evaluate alternatives to guardianship and supports and services available to the proposed ward that would avoid the need for appointment of a guardian.
- (d) The information gathered by the guardian ad litem under Subsection (c) is subject to examination by the court. HB39, §5

Ad Litem/Mediator Wheel SB 1876

TEX. GOVT CODE Subtitle B, Title 2, Chapter 37

CHAPTER 37. APPOINTMENTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS

Sec. 37.001. APPLICABILITY; CONFLICT OF LAW.

- (a) This chapter applies to a court in this state created by the Texas Constitution, by statute, or as authorized by statute that is located in a county with a population of 25,000 or more.

(b) To the extent of a conflict between this chapter and a specific provision relating to a court, this chapter controls.

Sec. 37.002. EXEMPTION. The appointment requirements of Section 37.004 do not apply to:

- (1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code;
- (2) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code;
- (3) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code; or
- (4) a person other than an attorney or a private professional guardian appointed to serve as a guardian as defined by Section 1002.012, Estates Code.

Sec. 37.003. LISTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS.

(a) In addition to a list required by other state law or rule, each court in this state shall establish and maintain the following lists:

- (1) a list of all attorneys who are qualified to serve as an attorney ad litem and are registered with the court;
- (2) a list of all attorneys and other persons who are qualified to serve as a guardian ad litem and are registered with the court;
- (3) a list of all persons who are registered with the court to serve as a mediator; and
- (4) a list of all attorneys and private professional guardians who are qualified to serve as a guardian as defined by Section 1002.012, Estates Code, and are registered with the court.

(b) A court may establish and maintain more than one of a list required under Subsection (a) that is categorized by the type of case and the person's qualifications.

(c) A local administrative judge, at the request of one or more of the courts the judge serves, shall establish and maintain the lists required under Subsection (a) for those courts. The local administrative judge may establish and maintain one set of lists for all of the requesting courts and may maintain for the courts more than one of a list as provided in Subsection (b).

Sec. 37.004. APPOINTMENT OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS; MAINTENANCE OF LISTS.

(a) Except as provided by Subsections (c) and (d), in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary, a court using a rotation system shall appoint the person whose name appears first on the applicable list maintained by the court as required by Section 37.003.

(b) In each case in which the appointment of a mediator is necessary because the parties to the case are unable to agree on a mediator, a court using a rotation system shall appoint the person whose name appears first on the mediator list maintained by the court as required under Section 37.003.

(c) The court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is agreed on by the parties and approved by the court.

(d) On finding good cause, the court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve on the case and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, mediator, or guardian is required on a complex matter because the person:

- (1) possesses relevant specialized education, training, certification, skill, language proficiency, or knowledge of the subject matter of the case;
- (2) has relevant prior involvement with the parties or case; or
- (3) is in a relevant geographic location.

(e) A person who is not appointed in the order in which the person's name appears on the applicable list shall remain next in order on the list.

(f) After a person has been appointed as an attorney ad litem, guardian ad litem, mediator, or guardian from the applicable list, the court shall place that person's name at the end of the list.

Sec. 37.005. POSTING OF LISTS. A court annually shall post each list established under Section 37.003 at the courthouse of the county in which the court is located and on any Internet website of the court.

SECTION 2. Section 25.0022(d), Government Code, is amended to read as follows:

(d) The presiding judge shall:

- (1) ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court;
- (2) advise local statutory probate court judges on case flow management practices and auxiliary court services;
- (3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;
- (4) appoint an assistant presiding judge of the statutory probate courts;
- (5) call and preside over annual meetings of the judges of the statutory probate courts at a time and place in the state as designated by the presiding judge;
- (6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the presiding judge to promote the orderly and efficient administration of justice in the statutory probate courts;
- (7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section;
- (8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions; ~~and~~
- (9) assign a judge or former or retired judge of a statutory probate court to hear a case under the circumstances described by Section 25.002201(b); and
- (10) require the local administrative judge for statutory probate courts in a county to ensure that all statutory probate courts in the county comply with Chapter 37.

Sec. 74.092. DUTIES OF LOCAL ADMINISTRATIVE JUDGE.

~~[(a)]~~ A local administrative judge, for the courts for which the judge serves as local administrative judge, shall:

- (1) implement and execute the local rules of administration, including the assignment, docketing, transfer, and hearing of cases;
- (2) appoint any special or standing committees necessary or desirable for court management and administration;
- (3) promulgate local rules of administration if the other judges do not act by a majority vote;
- (4) recommend to the regional presiding judge any needs for assignment from outside the county to dispose of court caseloads;
- (5) supervise the expeditious movement of court caseloads, subject to local, regional, and state rules of administration;
- (6) provide the supreme court and the office of court administration requested statistical and management information;
- (7) set the hours and places for holding court in the county;
- (8) supervise the employment and performance of nonjudicial personnel;
- (9) supervise the budget and fiscal matters of the local courts, subject to local rules of administration;
- (10) coordinate and cooperate with any other local administrative judge in the district in the assignment of cases in the courts' concurrent jurisdiction for the efficient operation of the court system and the effective administration of justice;
- (11) if requested by the courts the judge serves, establish and maintain the lists required by Section 37.003 and ensure appointments are made from the lists in accordance with Section 37.004 [a list of all attorneys qualified to serve as an attorney ad litem]; and
- (12) perform other duties as may be directed by the chief justice or a regional presiding judge.

- ~~[(b) A list of attorneys ad litem maintained under Subsection (a)(11) must contain the names of all attorneys who:~~
- ~~[(1) meet any statutory or other requirements to serve as an attorney ad litem; and~~
 - ~~[(2) have registered to serve as attorney ad litem with a court for which the judge maintaining the list serves as local administrative judge.]~~

SECTION 4. Section 74.093, Government Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The rules may provide for the establishment and maintenance of the lists required by Section 37.003, including the establishment and maintenance of more than one of a list required by that section that is categorized by the type of case, such as family law or probate law, and the person's qualifications.

Guardian Ad Litem Compensation HB1438 §10

Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM.

- (a) Regardless of whether a guardianship is created for a proposed ward, a [A] court that appoints a guardian ad litem under Section 1102.001 may authorize compensation of the guardian ad litem from available funds of:
 - (1) the proposed ward's estate; or
 - (2) the management trust, if a management trust has been created for the benefit of the proposed ward under Chapter 1301~~[, regardless of whether a guardianship is created for the proposed ward].~~
- (b) After examining the proposed ward's assets or the assets of any management trust created for the proposed ward's benefit under Chapter 1301, and determining that the proposed ward or the management trust is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

Certification, Attorney for Applicant & Ad Litem

- **Attorneys for applicants in guardianship must now hold ad litem certifications**
- **Certification course hours increase from 3 hours to 4, with one hour devoted to Less Restrictive Alternatives and “Supports and Services.”**

Sections 1054.201, Estates Code:

- (a) An attorney for an applicant for guardianship and a [A] court-appointed attorney in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas, or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.
- (b) The State Bar of Texas shall require ~~four~~ **four** ~~three~~ hours of credit for certification under this subchapter, including one hour on alternatives to guardianship and supports and services available to proposed wards.
HB39, §6

Effective Date:

- (c) Sections 1054.201... Estates Code, as amended by this Act, apply only to a guardianship proceeding filed on or after the effective date of this Act. A guardianship proceeding filed before the effective date of this Act is governed by the law in effect on the date the proceeding was filed, and the former law is continued in effect for that purpose. HB39, §24(c)

Ad Litem - Reports of fees SB1369

TEX. GOVT CODE, Subtitle B, Title 2, Chapter 36 (NEW):
CHAPTER 36. JUDICIAL REPORTS

Sec. 36.001. DEFINITIONS. In this chapter:

- (1) "Competency evaluator" means a physician or psychologist who is licensed or certified in this state and who performs examinations to determine whether an individual is incapacitated or has an intellectual disability for purposes of appointing a guardian for the individual. The term includes physicians and psychologists conducting examinations under Sections 1101.103 and 1101.104, Estates Code.

(2) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

Sec. 36.002. APPLICABILITY; CONFLICT OF LAW.

- (a) This chapter applies to a court in this state created by the Texas Constitution, by statute, or as authorized by statute.
- (b) To the extent of a conflict between this chapter and a specific provision relating to a court, this chapter controls.

Sec. 36.003. EXEMPTION. The reporting requirements of Section 36.004 do not apply to:

- (1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code;
- (2) information made confidential under state or federal law, including applicable rules;
- (3) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code; or
- (4) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code.

Sec. 36.004. REPORT ON APPOINTMENTS.

- (a) In addition to a report required by other state law or rule, the clerk of each court in this state shall prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case before the court in the preceding month. For a court that does not make an appointment in the preceding month, the clerk of the court must file a report indicating that no appointment was made by the court in that month. The report on court appointments must include:
 - (1) the name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;
 - (2) the name of the judge and the date of the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;
 - (3) the number and style of each case in which a person was appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for that month;
 - (4) the number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator in that month;
 - (5) the total amount of compensation paid to each attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator appointed by the court in that month and the source of the compensation; and
 - (6) if the total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for one appointed case in that month exceeds \$1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses.
- (b) Not later than the 15th day of each month, the clerk of a court shall:
 - (1) submit a copy of the report to the Office of Court Administration of the Texas Judicial System; and
 - (2) post the report at the courthouse of the county in which the court is located and on any Internet website of the court.
- (c) The Office of Court Administration of the Texas Judicial System shall prescribe the format that courts and the clerks of the courts must use to report the information required by this section and shall post the information collected under Subsection (b) on the office's Internet website.

Sec. 36.005. FAILURE TO REPORT. If a court in this state fails to provide to the clerk of the court the information required for the report submitted under Section 36.004, the court is ineligible for any grant money awarded by this state or a state agency for the next state fiscal biennium.

Sec. 36.006. TEXAS JUDICIAL COUNCIL RULES. The Texas Judicial Council shall, as the council considers appropriate, adopt rules to implement this chapter.

SECTION 2.

- (a) The Office of Court Administration of the Texas Judicial System shall conduct a study on the feasibility of establishing a statewide uniform attorney ad litem billing system that would allow attorneys appointed by courts in this state to serve as attorneys ad litem in cases before the courts to enter on a standardized form information regarding the appointment type and duration, case information and activities, numbers of hours served under the appointment, and hourly rate or flat fee paid for the appointment.
- (b) The study conducted under this section shall examine:
 - (1) the possible benefits to this state and to counties in this state of establishing a statewide uniform attorney ad litem billing system;
 - (2) the number of attorneys in this state providing legal representation in court-appointed matters;
 - (3) the number of hours spent in client representation activities by attorneys serving as attorneys ad litem;
 - (4) the qualifications of attorneys serving as attorneys ad litem, including training and specialization;
 - (5) whether using a standardized billing voucher would provide uniformity in the types of vouchers attorneys are currently required to submit to courts for payment; and
 - (6) the amount of money spent on court-appointed legal representation by year, court, county, and person served, such as parent, child, or other.
- (c) Not later than December 31, 2016, the Office of Court Administration of the Texas Judicial System shall submit an electronic copy of the study conducted under this section to the governor, lieutenant governor, and speaker of the house of representatives.
- (d) This section expires September 1, 2017.

SECTION 3. Chapter 36, Government Code, as added by this Act, applies beginning with the state fiscal year that begins September 1, 2016.

SECTION 4. This Act takes effect September 1, 2015.

Applicability & Effective Dates HB1438, § 35

- (a) Except as otherwise provided by this section, the changes in law made by this Act apply to:
 - (1) a guardianship created before, on, or after the effective date of this Act; and
 - (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.
- (b) The changes in law made by this Act to Sections 1023.005 and 1023.010, Estates Code, apply only to an application for the transfer of a guardianship to another county filed on or after the effective date of this Act. An application for the transfer of a guardianship to another county 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.
- (c) The changes in law made by this Act to Sections 1104.154 and 1104.205, Estates Code, apply only to a declaration executed on or after the effective date of this Act. A declaration executed before the effective date of this Act is governed by the law in effect on the date the declaration was executed, and the former law is continued in effect for that purpose.
- (d) The changes in law made by this Act to Section 1301.1535, Estates Code, apply only to a management trust created on or after the effective date of this Act. A management trust created before the effective date of this Act is governed by the law in effect on the date the management trust was created, and the former law is continued in effect for that purpose.
- (e) The changes in law made by this Act to Sections 1351.001 and 1351.002, Estates Code, apply only to an application for the sale of an interest in property of a minor filed on or after the effective date of this Act. An application for the sale of an interest in property of a minor that is 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.
- (f) The changes in law made by this Act to Sections 1351.051, 1351.052, and 1351.053, Estates Code, apply only to an application for the sale of an interest in property of a ward filed on or after the effective date of this Act. An application for the sale of an interest in property of a ward that is 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.

- (g) Section 1055.003, Estates Code, as added by this Act, applies only to a guardianship proceeding commenced on or after the effective date of this Act. A guardianship proceeding commenced 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.
- (h) The change in law made by this Act to Section 1251.052(b), Estates Code, applies only to a temporary guardian appointed on or after the effective date of this Act. A temporary guardian appointed before the effective date of this Act is governed by the law in effect when the guardian was appointed, and the former law is continued in effect for that purpose.
- (i) Sections 25.0022, 25.002201, 25.00255, and 26.012, Government Code, as amended by this Act, apply only to a motion for recusal or disqualification of a judge that is filed on or after the effective date of this Act. A motion for recusal or disqualification of a judge filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

Applicability & Effective Dates HB39 §24

- (a) Except as otherwise provided by this section, the changes in law made by this Act apply to:
 - (1) a guardianship created before, on, or after the effective date of this Act; and
 - (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.
- (b) Sections 1054.004 and 1054.054, Estates Code, as amended by this Act, apply only to a guardianship proceeding for which a court has appointed a guardian ad litem or attorney ad litem to represent the interests of a proposed ward on or after the effective date of this Act.
- (c) Sections 1054.201, 1101.101, 1101.103, 1101.151, 1101.152, and 1101.153, Estates Code, as amended by this Act, apply only to a guardianship proceeding filed on or after the effective date of this Act. A guardianship proceeding filed before the effective date of this Act is governed by the law in effect on the date the proceeding was filed, and the former law is continued in effect for that purpose.
- (d) Section 1101.001, Estates Code, as amended by this Act, applies only to an application for the appointment of a guardian filed on or after the effective date of this Act. An application for the appointment of a guardian 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.
- (e) Section 1202.051, Estates Code, as amended by this Act, applies only to an application for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed on or after the effective date of this Act. An application for the restoration of a ward's capacity or the modification of a ward's guardianship that is 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.
- (f) Sections 1202.151, 1202.152, 1202.153, 1202.154, and 1202.156, Estates Code, as amended by this Act, apply only to a proceeding for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed on or after the effective date of this Act. An application for the restoration of a ward's capacity or the modification of a ward's guardianship that is 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.

Bonds and Safekeeping

Bond Pending Intrastate Transfer HB1438 §1 - Bond of transferring court remain in effect until the judge in the receiving court can review and set a new or amended bond.

Sec. 1023.005. COURT ACTION.

- [(a)] On hearing an application under Section 1023.003, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order:
 - (1) authorizing the transfer on payment on behalf of the estate of all accrued costs; and
 - (2) requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010.
- [(b)] In an order entered under Subsection (a), the court shall require the guardian, not later than the 20th day after the date the order is entered, to:

- [(1) give a new bond payable to the judge of the court to which the guardianship is transferred; or
- [(2) file a rider to an existing bond noting the court to which the guardianship is transferred.] HB1438 §1

Sec. 1023.010. REVIEW OF TRANSFERRED GUARDIANSHIP. HB1438 §1

- (a) Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 1023.007, the court to which the guardianship was transferred shall hold a hearing to consider modifying the rights, duties, and powers of the guardian or any other provisions of the transferred guardianship.
- (b) After the hearing described by Subsection (a), the court to which the guardianship was transferred shall enter an order requiring the guardian to:
 - (1) give a new bond payable to the judge of the court to which the guardianship was transferred; or
 - (2) file a rider to an existing bond noting the court to which the guardianship was transferred. HB1438 §1

Safekeeping Agreements Prior to Qualification of Guardian HB1438 §9

Sec. 1101.156. REQUIRED DEPOSIT OF ESTATE ASSETS.

- (a) Before an order appointing a guardian is entered, or in such an order, a court may require the deposit of cash, securities, or other assets of a proposed ward or ward in a financial institution described by Section 1105.155(b) for safekeeping.
- (b) The amount of the bond required to be given by the guardian under Section 1105.101 shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section. HB1438 §9

Criminal Background Checks for Proposed Family Guardians HB1438 §13 - Eliminates the current exemption for family members of the ward or proposed ward from criminal background checks.

SECTION 13. Section 1104.402(a), Estates Code, is amended to read as follows:

- (a) Except as provided by Section 1104.403, 1104.404, or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to:
 - (1) a private professional guardian;
 - (2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;
 - (3) each person employed by a private professional guardian who will:
 - (A) have personal contact with a ward or proposed ward;
 - (B) exercise control over and manage a ward's estate; or
 - (C) perform any duties with respect to the management of a ward's estate;
 - (4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or
 - (5) any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney. HB1438 §13

Sec. 1104.409. USE OF INFORMATION BY COURT. The court shall use the information obtained under this subchapter only in determining whether to:

- (1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the department; or
- (2) appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney. HB1438 §14

SECTION 33. Sections 411.1386(a) and (e), Government Code, are amended to read as follows:

- (a) Except as provided by Subsections (a-1), (a-5), and (a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates ~~[Chapter XIII, Texas Probate]~~ Code, shall obtain from the department criminal history record information maintained by the department that

relates to:

- (1) a private professional guardian;
 - (2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;
 - (3) each person employed by a private professional guardian who will:
 - (A) have personal contact with a ward or proposed ward;
 - (B) exercise control over and manage a ward's estate; or
 - (C) perform any duties with respect to the management of a ward's estate;
 - (4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or
 - (5) any other person proposed to serve as a guardian under Title 3, Estates [Chapter XIII, Texas Probate] Code, including a proposed temporary guardian and a proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney.
- (e) The court, as that term is defined by Section 1002.008, Estates [601, Texas Probate] Code, shall use the information obtained or provided under Subsection (a), (a-4)(1), (a-5), or (a-6) only in determining whether to:
- (1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Department of Aging and Disability Services; or
 - (2) appoint any other person proposed to serve as a guardian under Title 3, Estates [Chapter XIII, Texas Probate] Code, including a proposed temporary guardian and a proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney. HB1438 §33

Criminal Background Checks - Service Providers SB219

SECTION 2.005. Sections 411.1386(a-1) and (a-3), Government Code, are amended to read as follows:

- (a-1) The Department of Aging and Disability Services shall obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to each individual who is or will be providing guardianship services to a ward of or referred by the Department of Aging and Disability Services, including:
- (1) an employee of or an applicant selected for an employment position with the Department of Aging and Disability Services;
 - (2) a volunteer or an applicant selected to volunteer with the Department of Aging and Disability Services;
 - (3) an employee of or an applicant selected for an employment position with a business entity or other person that contracts with the Department of Aging and Disability Services to provide guardianship services to a ward referred by the department; ~~[and]~~
 - (4) a volunteer or an applicant selected to volunteer with a business entity or person described by Subdivision (3); and
 - (5) a contractor or an employee of a contractor who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate of the ward.
- (a-3) The information in Subsection (a-1) regarding employees, contractors, or volunteers providing guardianship services must be obtained annually.

SECTION 2.006. Section 411.13861, Government Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

- (a) The Department of Aging and Disability Services is entitled to obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to a person:
- (1) required to undergo a background and criminal history check under Chapter 248A, Health and Safety Code; or
 - (2) who seeks unsupervised visits with a ward of the department, including a relative of the ward.
- (e) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

Costs/ Filing Fees

Guardianship Costs Assessed Against Management Trust held for the ward.

SECTION 5. Section 1052.051(f), Estates Code, is amended to read as follows:

- (f) After the creation of a guardianship, a person or entity is entitled to be reimbursed for a filing fee described by Subsection (d), other than a deposit for payment to an attorney ad litem, from:
- (1) the guardianship estate;
 - (2) the management trust, if a management trust has been created for the benefit of the ward under Chapter 1301 and the court determines it is in the ward's best interest; or
 - (3) ~~(2)~~ the county treasury, if the assets of the guardianship estate or management trust, as appropriate, are ~~is~~ insufficient to pay the amount of the filing fee. HB1438 §5

SECTION 15. Section 1155.151(a), Estates Code, is amended to read as follows:

- (a) In a guardianship proceeding, the court costs of the proceeding, including the cost of the guardians ad litem, attorneys ad litem, court visitor, mental health professionals, and interpreters appointed under this title, shall be set in an amount the court considers equitable and just and, except as provided by Subsection (c), shall be paid as follows, and the court shall issue the judgment accordingly:
- (1) out of the guardianship estate;
 - (2) out of the management trust, if a management trust has been created for the benefit of the ward under Chapter 1301 and the court determines it is in the ward's best interest; ~~;~~ or
 - (3) out of the county treasury if the assets of the guardianship estate or management trust, as appropriate, are ~~is~~ insufficient to pay the cost ~~and the court shall issue the judgment accordingly~~. HB1438 §15

Security for Costs HB 1438 §6 allow the clerk to obtain an order to that effect from the court authority to require an applicant to provide security for the probable costs of a guardianship.

SECTION 6. Section 1053.052(a), Estates Code, is amended to read as follows:

- (a) The clerk may require or may obtain from the court an order requiring a person who files an application, complaint, or opposition relating to a guardianship proceeding, other than a guardian, attorney ad litem, or guardian ad litem, to provide security for the probable costs of the proceeding before filing the application, complaint, or opposition. HB1438 §6

Probate Court Filing Fees HB 2182 §§ 4,5,6,7

- applies the \$25 filing fee for documents filed after the earlier of 1) the approval of the inventory or 2) 120 days after initiation of the proceeding applicable to all documents, not just those over 25 pages.
- also allows a county to charge a “district court records archive fee” for filings in any court in the county – not just filings in the district court.

SECTION 4. Section 51.319, Government Code, is amended to read as follows:

Sec. 51.319. OTHER FEES. The district clerk shall collect the following fees for services performed by the clerk:

- (1) for performing services related to the matter of the estate of a deceased person or a minor transacted in the district court, the same fees allowed the county clerk for those services;
- (2) for serving process by certified or registered mail, the same fee that sheriffs and constables are authorized to charge for the service under Section 118.131, Local Government Code; ~~and~~
- (3) for performing any other service prescribed or authorized by law for which no fee is set by law, a reasonable fee; and
- (4) for performing services related to a matter filed in a statutory county court, the same fees allowed the district clerk for those services in the district court.

SECTION 5. Section 51.604(a), Government Code, is amended to read as follows:

- (a) The district clerk shall collect a \$40 ~~[\$30]~~ jury fee for each civil case in which a person applies for a jury trial. The clerk of a county court or statutory county court shall collect a \$40 ~~[\$22]~~ jury fee for each civil case in which a person applies for a jury trial. The clerk shall note the payment of the fee on the court's docket.

SECTION 6. Section 118.052, Local Government Code, is amended to read as follows:

Sec. 118.052. FEE SCHEDULE. Each clerk of a county court shall collect the following fees for services rendered to any person:

- (1) CIVIL COURT ACTIONS
 - (A) Filing of Original Action (Sec. 118.053):
 - (i) Garnishment after judgment ... \$15.00
 - (ii) All others ... \$40.00
 - (B) Filing of Action Other than Original (Sec. 118.054) ... \$30.00
 - (C) Services Rendered After Judgment in Original Action (Sec. 118.0545):
 - (i) Abstract of judgment ... \$ 5.00
 - (ii) Execution, order of sale, writ, or other process ... \$ 5.00
- (2) PROBATE COURT ACTIONS
 - (A) Probate Original Action (Sec. 118.055):
 - (i) Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title ... \$40.00
 - (ii) Community survivors ... \$40.00
 - (iii) Small estates ... \$40.00
 - (iv) Declarations of heirship ... \$40.00
 - (v) Mental health or chemical dependency services ... \$40.00
 - (vi) Additional, special fee (Sec. 118.064) ... \$ 5.00
 - (B) Services in Pending Probate Action (Sec. 118.056):
 - (i) Filing an inventory and appraisalment *as provided by Section 118.056(d)* ... \$25.00
 - (ii) Approving and recording bond ... \$ 3.00
 - (iii) Administering oath ... \$ 2.00
 - (iv) Filing annual or final account of estate ... \$25.00
 - (v) Filing application for sale of real or personal property ... \$25.00
 - (vi) Filing annual or final report of guardian of a person ... \$10.00
 - (vii) Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisalment or after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages ... \$25.00
 - (C) Adverse Probate Action (Sec. 118.057) ... \$40.00
 - (D) Claim Against Estate (Sec. 118.058) ... \$10.00 [~~\$ 2.00~~]
 - (E) Supplemental Court-Initiated Guardianship Fee in Probate Original Actions and Adverse Probate Actions (Sec. 118.067) ... \$20.00
 - (F) Supplemental Public Probate Administrator Fee For Counties That Have Appointed a Public Probate Administrator (Sec. 118.068) ... \$10.00
- (3) OTHER FEES
 - (A) Issuing Document (Sec. 118.059): original document and one copy ... \$ 4.00
each additional set of an original and one copy ... \$ 4.00
 - (B) Certified Papers (Sec. 118.060): for the clerk's certificate ... \$ 5.00 plus a fee per page or part of a page of ... \$ 1.00
 - (C) Noncertified Papers (Sec. 118.0605): for each page or part of a page \$ 1.00
 - (D) Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment (Sec. 118.061) \$ 2.00
 - (E) Safekeeping of Wills (Sec. 118.062) ... \$ 5.00
 - (F) Mail Service of Process (Sec. 118.063) ... same as sheriff
 - (G) Records Management and Preservation Fee ... \$ 5.00

SECTION 7. The changes in law made by this Act apply only to a fee that becomes payable on or after the effective date of this Act. A fee that becomes payable before that date is governed by the law in effect when the fee became payable, and the former law is continued in effect for that purpose.

Guardianship Database Study HB 3424 directs the Office of Court Administration to conduct a feasibility study on 1) developing, implementing, and maintaining a computerized central database that contains the names of incapacitated persons who have a guardian and the name and contact information of the guardian. (2) best practices

for protecting the privacy of incapacitated persons and the confidentiality of information included in the database. The report is to be submitted 12-1-2016.

Designation (Pre-Need) – Self Proving Affidavit HB1438 §§11, 12

SECTION 11. Section 1104.154(a), Estates Code, is amended to read as follows:

- (a) As an alternative to the self-proving affidavit authorized by Section 1104.153, a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, _____, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity, and that I willingly make [~~have made~~] and execute [~~executed~~] it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of _____, 20__.

Declarant

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of _____, 20__.

Witness

Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of _____, 20__.

Notary Public in and for the
State of Texas
My Commission expires:

SECTION 12. Section 1104.205(a), Estates Code, is amended to read as follows:

- (a) As an alternative to the self-proving affidavit authorized by Section 1104.204, a declaration of guardian in the event of later incapacity or need of guardian may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, _____, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Guardian in the Event of Later Incapacity or Need of Guardian, and that I willingly make [~~have made~~] and execute [~~executed~~] it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of _____, 20__.

Declarant

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Guardian in the Event of Later Incapacity or Need of Guardian and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of _____, 20__.

Witness

Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of _____, 20__.

Notary Public in and for the
State of Texas
My Commission expires:

Duty to Provide Information About Ward HB 2665

Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE.

- (a) This section applies with respect to relatives described under Sections 1101.001(b)(13)(A)-(D).
- (b) Except as provided by Subsection (e), the guardian of an adult ward shall as soon as practicable inform relatives if:
 - (1) the ward dies;
 - (2) the ward is admitted to a medical facility for acute care for a period of three days or more;
 - (3) the ward's residence has changed; or
 - (4) the ward is staying at a location other than the ward's residence for a period that exceeds one calendar week.
- (c) In the case of the ward's death, the guardian shall inform relatives of any funeral arrangements and the location of the ward's final resting place.
- (d) A relative entitled to notice about a ward under this section may elect to not receive the notice by providing a written request to that effect to the guardian. A guardian shall file any written request received by the guardian under this subsection with the court.
- (e) On motion filed with the court showing good cause and after a relative is provided an opportunity to present evidence to the court under Subsection (f), the court, subject to Subsection (g), may relieve the guardian of the duty to provide notice about a ward to a relative under this section.
- (f) A copy of the motion required under Subsection (e) shall be provided to the relative specifically named in the motion unless the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative. The relative provided notice under this subsection may file evidence with the court in response to the motion, and the court shall consider that evidence before making a decision on the motion.
- (g) In considering a motion under Subsection (e), the court shall relieve the guardian of the duty to provide notice about a ward to a relative under this section if the court finds that:
 - (1) the motion includes a written request from a relative electing to not receive the notice;
 - (2) the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative;
 - (3) the guardian was able to locate the relative, but was unable to establish communication with the relative after making reasonable efforts to establish communication;
 - (4) a protective order was issued against the relative to protect the ward;
 - (5) a court or other state agency has found that the relative abused, neglected, or exploited the ward; or
 - (6) notice is not in the best interest of the ward.

Foreign Guardianship, Receipt & Acceptance HB1438 §21

Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP.

A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in the county in which the ward resides or in which it is intended that the ward will ~~[intends to]~~ reside to have the guardianship transferred to that ~~[the]~~ court. The

application must have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court. HB1438 §21

Intervention by “Person Interested in Guardianship” HB 4058 Notwithstanding the Rules of Civil Procedure, requires a potential Intervenor in a guardianship to file a timely motion setting out the purpose for which intervention is sought and serve the parties. The court may grant or deny the motion.

Sec. 1055.003. INTERVENTION BY INTERESTED PERSON.

- (a) Notwithstanding the Texas Rules of Civil Procedure, an interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.
- (b) The motion must state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought.
- (c) The court has the discretion to grant or deny the motion and, in exercising that discretion, must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights. HB1438 §7

Notices

- Calculation of Degrees of Consanguinity

SECTION 8. Section 1101.001, Estates Code, is amended by adding Subsection (c) to read as follows:

- (c) For purposes of this section, a proposed ward's relatives within the third degree by consanguinity include the proposed ward's:
 - (1) grandparent or grandchild; and
 - (2) great-grandparent, great-grandchild, aunt who is a sister of a parent of the proposed ward, uncle who is a brother of a parent of the proposed ward, nephew who is a child of a brother or sister of the proposed ward, or niece who is a child of a brother or sister of the proposed ward.

- Notice to ~~Next of Kin~~ Other Living Relatives is changed from “next of kin” to “other living relative” for notice of a guardianship application in the absence of a living spouse, parents, or adult siblings or children

SECTION 3. Section 1051.104(a), Estates Code, is amended to read as follows:

- (a) The person filing an application for guardianship shall mail a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:
 - (1) each adult child of the proposed ward;
 - (2) each adult sibling of the proposed ward;
 - (3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;
 - (4) the operator of a residential facility in which the proposed ward resides;
 - (5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;
 - (6) a person designated to serve as guardian of the proposed ward by a written declaration under Subchapter E, Chapter 1104, if the applicant knows of the existence of the declaration;
 - (7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the proposed ward;
 - (8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and
 - (9) each adult [person] named [as another relative within the third degree by consanguinity] in the application as an "other living relative" of the proposed ward within the third degree by consanguinity, as required by Section 1101.001(b)(11) or (13), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child. Hb1438 §3

E-Notices from Clerk and Court SB 1116

TEX. GOVT CODE Subtitle F, Title 2
CHAPTER 80. DELIVERY OF NOTICE AND DOCUMENTS

Sec. 80.001. DELIVERY OF NOTICE OR DOCUMENT. A court, justice, judge, magistrate, or clerk may send any notice or document by a method authorized by Section 80.002.

Sec. 80.002. AUTHORIZED DELIVERY OF NOTICE OR DOCUMENT. A court, justice, judge, magistrate, or clerk may send any notice or document using mail or electronic mail. This section applies to all civil and criminal statutes requiring delivery of a notice or document.

Sec. 80.003. ELECTRONIC MAIL ADDRESS.

(a) If electronic mail is used to send a notice or document and the person who will receive the notice or document is registered with the electronic filing system established under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013, the court, justice, judge, magistrate, or clerk sending the notice or document must use the electronic mail address on file with the electronic filing system, if the court uses the electronic filing system.

(b) If electronic mail is used to send a notice or document and the person who will receive the notice or document is not registered with the electronic filing system established under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013, or the court does not use the electronic filing system, the court, justice, judge, magistrate, or clerk must use the electronic mail address provided by the person.

Sec. 80.004. MAIL.

(a) The definition of mail in this chapter includes:

- (1) first-class mail;
- (2) first-class United States mail;
- (3) ordinary or regular mail; and
- (4) international first-class mail.

(b) The definition of mail in this chapter does not include:

- (1) any form of mail that requires proof of delivery;
- (2) certified mail;
- (3) certified mail or a comparable mailing method that provides proof of delivery;
- (4) certified mail, restricted delivery;
- (5) certified mail, return receipt requested;
- (6) delivery by the United States Postal Service using a signature confirmation service;
- (7) documents delivered by common or contract carriers, including Federal Express or United Parcel Service;
- (8) express mail offered by the United States Postal Service;
- (9) first-class mail, return receipt requested;
- (10) freight mail;
- (11) interagency mail;
- (12) international registered mail, return receipt requested;
- (13) mail, return receipt requested;
- (14) personal service or hand delivery;
- (15) prepaid registered mail;
- (16) registered mail;
- (17) registered mail, return receipt requested; and
- (18) certified or registered mail, restricted delivery, return receipt requested.

Sec. 80.005. ELECTRONIC MAIL.

(a) Authorized methods of delivering a notice or document by electronic mail include:

- (1) electronic notice sent through the electronic filing system under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013;
- (2) electronic notice;
- (3) electronic mail messages;
- (4) e-mail; and
- (5) secure electronic mail.

(b) Authorized methods of delivering a notice or document by electronic mail do not include:

- (1) facsimiles;
- (2) instant messaging;
- (3) messages on a social network website, including Facebook and Twitter;
- (4) telegraphs;
- (5) telephone messages;
- (6) text messages;
- (7) videoconferencing;
- (8) voice messages; or
- (9) webcams.

Less Restrictive Alternatives (Including “Supports and Services”)

- Less Restrictive Alternatives HB39, §22- non-exclusive list

Tex. Est Code, Subtitle I, Title 3

**SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR [ALTERNATIVES TO]
GUARDIANSHIP**

Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP. "Alternatives to guardianship" includes the:

- (1) execution of a medical power of attorney under Chapter 166, Health and Safety Code;
- (2) appointment of an attorney in fact or agent under a durable power of attorney as provided by Subtitle P, Title 2;
- (3) execution of a declaration for mental health treatment under Chapter 137, Civil Practice and Remedies Code;
- (4) appointment of a representative payee to manage public benefits;
- (5) establishment of a joint bank account;
- (6) creation of a management trust under Chapter 1301;
- (7) creation of a special needs trust;
- (8) designation of a guardian before the need arises under Subchapter E, Chapter 1104; and
- (9) establishment of alternate forms of decision-making based on person-centered planning. HB39, §2

- “Supports And Services:” HB38, §2 – Additional less restrictive alternatives to guardianship, often employed after the appointment of a guardian, to lessen the impact or extent of a plenary guardianship. This includes resources and assistance to enable an individual (assuming sufficient capacity) to meet needs for food, clothing, or shelter; care for physical or mental health; manage financial affairs; or make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

Sec. 1002.031. SUPPORTS AND SERVICES. "Supports and services" means available formal and informal resources and assistance that enable an individual to:

- (1) meet the individual's needs for food, clothing, or shelter;
- (2) care for the individual's physical or mental health;
- (3) manage the individual's financial affairs; or
- (4) make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

- Supports and Services – Application HB39, §7

Section 1101.001(b), Estates Code, is amended to read as follows:

(b) The application must be sworn to by the applicant and state:

- (1) the proposed ward's name, sex, date of birth, and address;
- (2) the name, relationship, and address of the person the applicant seeks to have appointed as guardian;
- (3) whether guardianship of the person or estate, or both, is sought;
- (3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

- (3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;
- (4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:
- (A) the right of a proposed ward who is 18 years of age or older to vote in a public election; ~~and~~
- (B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and
- (C) the right of a proposed ward to make personal decisions regarding residence;
- (5) the facts requiring the appointment of a guardian;
- (6) the interest of the applicant in the appointment of a guardian;
- (7) the nature and description of any kind of guardianship existing for the proposed ward in any other state;
- (8) the name and address of any person or institution having the care and custody of the proposed ward;
- (9) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;
- (10) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;
- (11) for a proposed ward who is a minor, the following information if known by the applicant:
- (A) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;
- (B) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased; and
- (C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;
- (12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:
- (A) the court involved;
- (B) the nature of the proceeding; and
- (C) any final disposition of the proceeding;
- (13) for a proposed ward who is an adult, the following information if known by the applicant:
- (A) the name of the proposed ward's spouse, if any, and either the spouse's address or that the spouse is deceased;
- (B) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;
- (C) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased;
- (D) the name and age of each of the proposed ward's children, if any, and either the child's address or that the child is deceased; and
- (E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;
- (14) facts showing that the court has venue of the proceeding; and
- (15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

- Supports and Services - Findings HB39, §8

Section 1101.101, Estates Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

- (a) Before appointing a guardian for a proposed ward, the court must:
- (1) find by clear and convincing evidence that:
- (A) the proposed ward is an incapacitated person;

- (B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian; ~~and~~
- (C) the proposed ward's rights or property will be protected by the appointment of a guardian;
- (D) alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and
- (E) supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and
- (2) find by a preponderance of the evidence that:
 - (A) the court has venue of the case;
 - (B) the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;
 - (C) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and
 - (D) the proposed ward:
 - (i) is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or
 - (ii) lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.
- (c) A finding under Subsection (a)(2)(D)(ii) must specifically state whether the proposed ward lacks the capacity, or lacks sufficient capacity with supports and services, to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

Section 1202.151(a), Estates Code, is amended to read as follows:

- (a) Except as provided by Section 1202.201, at a hearing on an application filed under Section 1202.051, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the complete restoration of the ward's capacity or modification of the ward's guardianship, including whether:
 - (1) the guardianship is necessary; and
 - (2) specific powers or duties of the guardian should be limited if the ward receives supports and services.

- Supports and Services – Restoration – Application HB39, § 16

Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any person interested in the ward's welfare may file a written application with the court for an order:

- (1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;
- (2) finding that the ward lacks the capacity, or lacks sufficient capacity with supports and services, to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and granting additional powers or duties to the guardian; or
- (3) finding that the ward has the capacity, or sufficient capacity with supports and services, to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and:
 - (A) limiting the guardian's powers or duties; and
 - (B) permitting the ward to care for himself or herself, make personal decisions regarding residence, or ~~to~~ manage the ward's own financial affairs commensurate with the ward's ability, with or without supports and services. HB39, §16

- Supports and Services – Restoration – Evidence HB39, § 17

SECTION 17. Section 1202.151(a), Estates Code, is amended to read as follows:

- (a) Except as provided by Section 1202.201, at a hearing on an application filed under Section 1202.051, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the

hearing that is relevant to the complete restoration of the ward's capacity or modification of the ward's guardianship, including whether:

(1) the guardianship is necessary; and

(2) specific powers or duties of the guardian should be limited if the ward receives supports and services.

HB39, §17

- Supports and Services – Restoration – CME HB39, § 18

SECTION 18. Section 1202.152(b), Estates Code, is amended to read as follows:

(b) A letter or certificate presented under Subsection (a) must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity, or sufficient capacity with supports and services, to:

(A) provide food, clothing, and shelter for himself or herself;

(B) care for the ward's own physical health; and

(C) manage the ward's financial affairs;

(2) provide a medical prognosis specifying the estimated severity of any incapacity;

(3) state how or in what manner the ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the ward's physical or mental health;

(4) state whether any current medication affects the ward's demeanor or the ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6) include any other information required by the court. HB39, §18

- Supports and Services – Restoration – Findings HB39, § 19

Section 1202.153(c), Estates Code, is amended to read as follows:

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity, with or without supports and services, warrants a modification of the guardianship and that some of the ward's rights need to be restored, with or without supports and services. HB39, §19

- Supports and Services – Restoration – Order HB39, § 20

Section 1202.154(a), Estates Code, is amended to read as follows:

(a) A court order entered with respect to an application filed under Section 1202.051 to completely restore a ward's capacity or modify a ward's guardianship must state:

(1) the guardian's name;

(2) the ward's name; ~~and~~

(3) whether the type of guardianship being addressed at the proceeding is a:

(A) guardianship of the person;

(B) guardianship of the estate; or

(C) guardianship of both the person and the estate; and

(4) if applicable, any necessary supports and services for the restoration of the ward's capacity or modification of the guardianship. HB39, §20

Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING GUARDIANSHIP. If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify, in addition to the information required by Section 1202.154:

(1) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward's property, as appropriate;

(2) the specific areas of protection and assistance to be provided to the ward;

(3) any limitation of the ward's rights;

(4) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote and make personal decisions regarding residence; and

- (5) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order. HB39, §21

- Supports and Services – Closing – Order HB39, §15

Sections 1202.001(b) and (c), Estates Code, are amended to read as follows:

- (b) A guardianship shall be settled and closed when the ward:
- (1) dies and, if the ward was married, the ward's spouse qualifies as survivor in community;
 - (2) is found by the court to have full capacity, or sufficient capacity with supports and services, to care for himself or herself and to manage the ward's property;
 - (3) is no longer a minor; or
 - (4) no longer must have a guardian appointed to receive funds due the ward from any governmental source.
- (c) Except for an order issued under Section 1101.153(a-1), an [An] order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave. HB39 §15

Supported Decision-Making Agreements (Uniform Act) HB39, §23 - a less restrictive alternative to guardianship for adults with disabilities re ADLs but who are not incapacitated. No mechanism for a finding of incapacity for guardianship to set aside such an agreement.

CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1357.001. SHORT TITLE. This chapter may be cited as the Supported Decision-Making Agreement Act.

Sec. 1357.002. DEFINITIONS. In this chapter:

- (1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.
- (2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.
- (3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.
- (4) "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter entered into under this chapter.
- (5) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

Sec. 1357.003. PURPOSE. The purpose of this chapter is to recognize a less restrictive substitute for guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING AGREEMENT. An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:

- (1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;
- (2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;
- (3) assist the adult with a disability in understanding the information described by Subdivision (2); and
- (4) assist the adult in communicating the adult's decisions to appropriate persons.

Sec. 1357.052. AUTHORITY OF SUPPORTER. A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

Sec. 1357.053. TERM OF AGREEMENT.

- (a) Except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.
- (b) The supported decision-making agreement is terminated if:
 - (1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter; or
 - (2) the supporter is found criminally liable for conduct described by Subdivision (1).

Sec. 1357.054. ACCESS TO PERSONAL INFORMATION.

- (a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.
- (b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.
- (c) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED DECISION-MAKING AGREEMENT.

- (a) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.
- (b) If signed before two witnesses, the attesting witnesses must be at least 14 years of age.

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT.

- (a) Subject to Subsection (b), a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT

Appointment of Supporter

I, (insert your name), make this agreement of my own free will.

I agree and designate that:

Name:

Address:

Phone Number:

E-mail Address:

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

2. Help me understand my options so I can make an informed decision; or

3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this _____ day of _____, 20____

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(Signature of Supporter)

(Printed Name)

(Signature of Adult with Disability)

(Printed Name)

(Witness 1 Signature)

(Printed Name)

(Witness 2 Signature)

(Printed Name)

State of _____ §
County of _____ §

This document was acknowledged before me on (date) by (name of adult with a disability) and (name of supporter).

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires:

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

(b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY.

(a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION. If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services in accordance with Section 48.051, Human Resources Code. SB 1881

Custodianships SB1202 increases transfer limit to custodianship from \$15,000 to \$25,000.

Section 141.007(c), Property Code, is amended to read as follows:

(c) A transfer under Subsection (a) or (b) may be made only if:

- (1) the legal representative or trustee considers the transfer to be in the best interest of the minor;
- (2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and
- (3) the transfer is authorized by the court if it exceeds \$25,000 [~~\$10,000~~] in value.

Section 141.008(c), Property Code, is amended to read as follows:

- (c) If a custodian has not been nominated under Section 141.004, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$25,000 [~~\$15,000~~] in value.

Orders, Maintenance by Nursing Homes, etc. HB 1337 requires convalescent homes, nursing homes and assisted living facilities to keep copies of any court order appointing a guardian of a resident in the resident's medical records, and authorizes a DADS investigator to inspect the order when investigating a report of abuse, neglect, or exploitation.

Health and Safety Code Sec. 242.019. GUARDIANSHIP ORDERS. An institution shall make a reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An institution that receives a copy of a court order appointing a guardian of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

Health and Safety Code Sec. 247.070. GUARDIANSHIP ORDERS. An assisted living facility shall make a reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An assisted living facility that receives a copy of a court order appointing a guardian of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

Section 260A.007(e), Health and Safety Code, is amended to read as follows:

- (e) In investigating the report of abuse, neglect, exploitation, or other complaint, the investigator for the department shall:
 - (1) make an unannounced visit to the facility to determine the nature and cause of the alleged abuse, neglect, or exploitation of the resident;
 - (2) interview each available witness, including the resident who suffered the alleged abuse, neglect, or exploitation if the resident is able to communicate or another resident or other witness identified by any source as having personal knowledge relevant to the report of abuse, neglect, exploitation, or other complaint;
 - (3) personally inspect any physical circumstance that is relevant and material to the report of abuse, neglect, exploitation, or other complaint and that may be objectively observed;
 - (4) make a photographic record of any injury to a resident, subject to Subsection (n); [~~and~~]
 - (5) write an investigation report that includes:
 - (A) the investigator's personal observations;
 - (B) a review of relevant documents and records;
 - (C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse, neglect, or exploitation and any other resident interviewed in the investigation; and
 - (D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation; and
 - (6) for a resident of an institution or assisted living facility, inspect any court order appointing a guardian of the resident who was the subject of the alleged abuse, neglect, or exploitation that is maintained in the resident's medical records under Section 242.019 or 247.070.

Effective Date:

- (a) An institution is not required to comply with Section 242.019, Health and Safety Code, as added by this

Act, before January 1, 2016.

- (b) An assisted living facility is not required to comply with Section 247.070, Health and Safety Code, as added by this Act, before January 1, 2016.

PCME - Possible Improvement and Re-evaluation HB39, §9

- PCME to include whether improvement possible and future re-evaluation date

Section 1101.103(b), Estates Code, is amended to read as follows:

(b) The letter or certificate 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 [~~function~~] 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 [~~perform simple calculations~~];
 - (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.

PCME – Order to Include Date for Updated PCME

Section 1101.153, Estates Code, is amended by adding Subsection (a-1) to read as follows:

- (a-1) If the letter or certificate under Section 1101.103(b)(3-a) stated that improvement in the ward's physical condition or mental functioning is possible and specified a period of less than a year after which the ward should be reevaluated to determine continued necessity for the guardianship, an order appointing a guardian must include the date by which the guardian must submit to the court an updated letter or certificate containing the requirements of Section 1101.103(b).

Powers/Rights

Bill of Rights for Wards SB1882

Ward's Bill of Rights
Chapter 1151, Texas Estates Code
H. RIGHTS OF WARDS

Sec. 1151.351. BILL OF RIGHTS FOR WARDS.

- (a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.
- (b) Unless a right is limited by a court or otherwise restricted by law, a ward has the right:
 - (1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;
 - (2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;
 - (3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;
 - (4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);
 - (5) to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;
 - (6) to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;
 - (7) to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;
 - (8) to exercise full control of all aspects of life not specifically granted by the court to the guardian;
 - (9) to control the ward's personal environment based on the ward's preferences;
 - (10) to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;
 - (11) to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;
 - (12) to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;
 - (13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;
 - (14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;
 - (15) to personal privacy and confidentiality in personal matters, subject to state and federal law;
 - (16) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:
 - (A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and
 - (B) the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);
 - (17) to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship,

the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;

- (18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;
 - (19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;
 - (20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;
 - (21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;
 - (22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;
 - (23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and
 - (24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.
- (c) This section does not supersede or abrogate other remedies existing in law.

Preference of Proposed Ward HB39, §13

Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed guardian and, to the extent consistent with other provisions of this title, shall give due consideration to the preference indicated by the incapacitated person, regardless of whether the person has designated by declaration a guardian before the need arises under Subchapter E. HB39, §13

Records, Financial – Court Investigators HB1438, §28

Section 59.006(a), Finance Code, is amended to read as follows:

- (a) This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require or authorize a financial institution to give a customer notice of:
 - (1) a demand or inquiry from a state or federal government agency authorized by law to conduct an examination of the financial institution;
 - (2) a record request from a state or federal government agency or instrumentality under statutory or administrative authority that provides for, or is accompanied by, a specific mechanism for discovery and protection of a customer record of a financial institution, including a record request from a federal agency subject to the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the Internal Revenue Service under Section 1205, Internal Revenue Code of 1986;
 - (3) a record request from or report to a government agency arising out of:
 - (A) the investigation or prosecution of a criminal offense;
 - (B) the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48, Human Resources Code; or
 - (C) the assessment for or provision of guardianship services under Subchapter E, Chapter 161, Human Resources Code;
 - (4) a record request in connection with a garnishment proceeding in which the financial institution is garnishee and the customer is debtor;
 - (5) a record request by a duly appointed receiver for the customer;
 - (6) an investigative demand or inquiry from a state legislative investigating committee;
 - (7) an investigative demand or inquiry from the attorney general of this state as authorized by law other than the procedural law governing discovery in civil cases; [✗]

- (8) the voluntary use or disclosure of a record by a financial institution subject to other applicable state or federal law; or
- (9) a record request in connection with an investigation conducted under Section 1054.151, 1054.152, or 1102.001, Estates Code.

Residence, Decisions Regarding HB39, §§10, 21

- Plenary Guardianship – mandated findings

Sections 1101.151(a) and (b), Estates Code, are amended to read as follows:

- (a) If it is found that the proposed ward is **totally without capacity** to care for himself or herself, manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.
- (b) An order appointing a guardian under this section must contain findings of fact and specify:
 - (1) the information required by Section 1101.153(a);
 - (2) that the guardian has full authority over the incapacitated person;
 - (3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;
 - (4) whether the person is totally incapacitated because of a mental condition;
 - (5) that the person does not have the capacity to operate a motor vehicle, make personal decisions regarding residence, and [~~to~~] vote in a public election; and
 - (6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1). HB39, §10

- Guardianship less than plenary – mandated findings – mandates judge to allow ward (with sufficient capacity) to make decisions regarding residence.

Sections 1101.152(a) and (b), Estates Code, are amended to read as follows:

- (a) If it is found that the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself, including making personal decisions regarding residence, or to manage his or her property commensurate with the proposed ward's ability.
- (b) An order appointing a guardian under this section must contain findings of fact and specify:
 - (1) the information required by Section 1101.153(a);
 - (2) the specific powers, limitations, or duties of the guardian with respect to the person's care or the management of the person's property by the guardian;
 - (2-a) the specific rights and powers retained by the person:
 - (A) with the necessity for supports and services; and
 - (B) without the necessity for supports and services;
 - (3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and
 - (4) whether the person is incapacitated because of a mental condition and, if so, whether the person:
 - (A) retains the right to make personal decisions regarding residence or vote in a public election; or
 - (B) maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code. HB39, §10

- Modification Order – mandated findings HB39, §21

Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING GUARDIANSHIP. If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify, in addition to the information required by Section 1202.154:

- (1) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward's property, as appropriate;
- (2) the specific areas of protection and assistance to be provided to the ward;

- (3) any limitation of the ward's rights;
- (4) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote and make personal decisions regarding residence; and
- (5) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

Restrictive Care Requires guardian to notice, application and order to court to place ward in more restrictive care facility absent an emergency. *HB 39, §14*

Section 1151.051, Estates Code, is amended by adding Subsection (e) to read as follows:

- (e) Notwithstanding Subsection (c)(1) and except in cases of emergency, a guardian of the person of a ward may only place the ward in a more restrictive care facility if the guardian provides notice of the proposed placement to the court, the ward, and any person who has requested notice and after:
- (1) the court orders the placement at a hearing on the matter, if the ward or another person objects to the proposed placement **before the eighth business day** after the person's receipt of the notice; or
 - (2) the seventh business day after the court's receipt of the notice, if the court does not schedule a hearing, on its own motion, on the proposed placement before that day. HB39, §14

Temporary Guardianship Pending Contest - Duration HB1438, §20

Section 1251.052(b), Estates Code, is amended to read as follows:

- (b) The term of a temporary guardian appointed under Section 1251.051 expires on the earliest of the following:
- (1) [at] the conclusion of the hearing challenging or contesting the application; [or]
 - (2) [on] the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian; or
 - (3) the 12-month anniversary of the date the temporary guardian qualifies, unless the term is extended by court order issued after a motion to extend the term is filed and a hearing on the motion is held.

Visitation of Inmate Ward by Guardian HB634 - gives the guardian of an inmate ward the same visitation rights as next of kin.

Code of Criminal Procedure Art. 26.041. PROCEDURES RELATED TO GUARDIANSHIPS.

- (a) In this article:
- (1) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.
 - (2) "Letters of guardianship" means a certificate issued under Section 1106.001(a), Estates Code.
- (b) A guardian who provides a court with letters of guardianship for a defendant may:
- (1) provide information relevant to the determination of indigency; and
 - (2) request that counsel be appointed in accordance with this chapter.

Government Code Section 501.010 is amended by amending Subsection (a) and adding Subsections (a-1) and (b-1) to read as follows:

- (a) In this section:
- (1) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.
 - (2) "Letters of guardianship" means a certificate issued under Section 1106.001(a), Estates Code.
- (a-1) The institutional division shall allow the governor, members of the legislature, and members of the executive and judicial branches to enter at proper hours any part of a facility operated by the division where inmates are housed or worked, for the purpose of observing the operations of the division. A visitor described by this subsection may talk with inmates away from institutional division employees.
- (b-1) The uniform visitation policy must:
- (1) allow visitation by a guardian of an inmate to the same extent as the inmate's next of kin, including placing the guardian on the inmate's approved visitors list on the guardian's request and providing the guardian access to the inmate during a facility's standard visitation hours if the inmate is otherwise eligible to receive visitors; and
 - (2) require the guardian to provide the warden with letters of guardianship before being allowed to visit the inmate.

Government Code Section 507.030 is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) In this section:

(1) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(2) "Letters of guardianship" means a certificate issued under Section 1106.001(a), Estates Code.

(a-1) The state jail division shall allow the governor, members of the legislature, and officials of the executive and judicial branches to enter during business hours any part of a facility operated by the division, for the purpose of observing the operations of the division. A visitor described by this subsection may talk with defendants away from division employees.

(b) The state jail division shall establish a visitation policy for persons confined in state jail felony facilities. The visitation policy must:

(1) allow visitation by a guardian of a defendant confined in a state jail felony facility to the same extent as the defendant's next of kin, including placing the guardian on the defendant's approved visitors list on the guardian's request and providing the guardian access to the defendant during a facility's standard visitation hours if the defendant is otherwise eligible to receive visitors; and

(2) require the guardian to provide the director of the facility with letters of guardianship before being allowed to visit the defendant.

Government Code Section 511.009(a) is amended to read as follows:

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning

- secure confinement of children in county jails;
- (15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;
 - (16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:
 - (A) common issues concerning jail administration;
 - (B) examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and
 - (C) solutions to operational challenges for jails;
 - (17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;
 - (18) adopt reasonable rules and procedures establishing minimum requirements for jails to:
 - (A) determine if a prisoner is pregnant; and
 - (B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant; ~~and~~
 - (19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; and
 - (20) adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:
 - (A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and
 - (B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner.

Effective Date: Not later than December 1, 2015:

- (1) the Texas Department of Criminal Justice shall revise visitation policies consistent with Sections 501.010 and 507.030, Government Code, as amended by this Act; and
- (2) the Commission on Jail Standards shall establish rules and procedures as required by Section 511.009(a)(20), Government Code, as added by this Act.

Application: Article 26.041, Code of Criminal Procedure, as added by this Act, applies to a defendant for whom indigency is at issue, regardless of whether the defendant is arrested before, on, or after the effective date of this Act. HB634