

Legislative Update  
80th Legislature, Regular Session

This report briefly summarizes new legislation concerning Texas guardians and their role in the judicial system. It focuses on legislation affecting the probate courts, judges, county clerks, the Guardianship Certification Board, and other judicial system actors. It was excerpted, for the most part, from the Office of Court Administration's legislative update summarizing new legislative directly affecting the Texas judiciary. You may read the complete report on OCA's [website](#). The full text of all bills referenced is available from the Texas Legislature Online's website, [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

**HB 342** – Effective 6/15/07

Provides that court in which guardianship proceeding is filed and venue is proper may delay further action if another guardianship proceeding is subsequently filed in a foreign jurisdiction and venue in the foreign court is proper. Requires court to determine whether venue is more suitable in that court or the foreign court and to resume or transfer the proceeding, depending on court's venue determination. *See* § 894, Probate Code.

**HB 391** - Effective 6/15/07

Deletes the requirement to include the applicant's social security number on emergency intervention applications to obtain funds needed for a decedent's funeral and for access to a decedent's personal property. *See* §§ 111, 112 Probate Code

**HB 391** – Effective 9/1/07

Imposes additional requirements on clerks when application for sale of real property is filed. Adds "incapacitated person" to the definition of "interested persons." Requires clerk to inform interested persons of right to oppose the sale and also to inform judge immediately if an opposition to the sale is filed within certain time period. Requires clerk to notify applicant and any opponents if court sets a hearing. *See* §§ 3, 344, 345, 345A, Probate Code.

**HB 417** – Effective 9/1/07

Makes several changes in procedures for guardianship proceedings, including terms of and compensation for guardians ad litem and attorneys ad litem, court initiation of guardianship proceedings, required findings regarding the ward's right to vote and right to operate a motor vehicle, and hearings on applications for the sale of real estate. *See* §§ 645-695, 759-761, 823-855B, Probate Code.

**HB 518** – Effective 9/1/07

Authorizes peace officer to detain person for 48 hours without warrant if circumstances lead officer to conclude there is reasonable cause to believe person is mentally ill and that mental illness creates substantial risk of imminent serious harm to the mentally ill person or others. Provides that this 48-hour period includes any time patient spends waiting in the facility for medical care before receiving the preliminary examination. Authorizes person to be detained until 12 p.m., rather than 4 p.m., on the first succeeding business day if the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day. Authorizes person to be detained only until 4 p.m. on the day the 48-hour period ends if the 48-hour period ends at a different time. Deletes existing text providing that the period does not include any time during which the person is actually receiving necessary medical care in the

facility's emergency room or emergency care in another area of the facility. Requires a physician to examine the person as soon as possible within 12, rather than 24, hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian. *See* §§ 573.021(b) and (c), 574.021(d), Health and Safety Code.

**HB 519** - Effective 9/1/07

Clarifies existing law that a trust for an incapacitated person, with or without a guardian, is created on order of a court exercising probate jurisdiction. *See*, §867, Probate Code.

**HB 585** – Effective 6/15/07

Authorizes probate court to exercise jurisdiction in guardianship proceeding involving disabled adult for whom another court obtained continuing, exclusive jurisdiction in suit affecting the parent-child relationship when the person was a child. *See* §§606, 682A, Probate Code.

**HB 1709** – Effective 9/1/07

Authorizes a court with evidence that a personal representative bond or guardian bond is insufficient to order that the guardian or personal representative provide new bond. Authorizes personal representative to request hearing on order. *See* §§205, 206, 713, 714, Probate Code.

**HB 2691** - Effective 9/1/07

Sets forth requirements for a local guardianship program to receive grants from the Health and Human Services Commission. *See* § 531.125, Government Code.

**SB 291** – Effective 9/1/07

Requires Department of Aging and Disability Services (“DADS”) to perform criminal background checks for persons employed by DADS as guardians and to submit the background checks to the Guardianship Certification Board (“GCB”) and the county clerk. Also requires DADS to submit to GCB a list of names, along with identifiable information and the county of employment or prospective employment, of all persons employed or seeking employment as a guardian. Requires clerks to obtain criminal history information for proposed guardians who are not members of the ward's family or an attorney. Also permits clerks to charge \$10 fee to recover costs of obtaining criminal history information. *See* § 411.1386, Government Code and §§ 697A, 698, Probate Code.

**SB 505** – Effective 4/25/07

Authorizes Guardianship Certification Board (“GCB”) to obtain criminal history information from Department of Public Safety on applicants and holders of a certificate issued by GCB. *See* § 411.1406, Government Code.

**SB 506** – Effective 4/25/07

Authorizes Guardianship Certification Board to establish qualifications for provisional certification and issue provisional certificates to individuals that do not meet qualifications for guardianship certification. Authorizes supreme court to adopt rules for provisional certification. Permits provisionally-certified individuals to provide guardianship services. *See* § 111.016, 111.0421, Government Code.

**SB 507** – Effective 9/1/07

Authorizes reimbursement of members of Guardianship Certification Board (“GCB”) for travel and other expenses incurred in performance of GCB duties. *See* § 111.011, Government Code.