

CHAPTER 905

S.B. No. 236

AN ACT

relating to guardianships for incapacitated persons; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.013 to read as follows:

Sec. 22.013. JUDICIAL INSTRUCTION RELATED TO GUARDIANSHIP ISSUES.

(a) The supreme court shall provide a course of instruction that relates to issues that arise in guardianship cases for judges involved in those cases.

(b) The supreme court shall adopt the rules necessary to accomplish the purposes of this section.

(c) The instruction must include information about:

- (1) statutory and case law relating to guardianships;*
- (2) the aging process and the nature of disabilities;*
- (3) the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and related case and statutory law, rules, and compliance methods;*
- (4) the principles of equal access and accommodation;*
- (5) the use of community resources for the disabled; and*
- (6) avoidance of stereotypes through a focus on people's individual abilities, support needs, and inherent individual value.*

(d) The instruction may include information about:

- (1) substantive areas of law concerning the needs of elderly persons and persons with disabilities;*
- (2) barriers to physical access and methods to overcome those barriers;*
- (3) communication needs of elderly persons and persons with disabilities and the technology available to provide access to communication;*
- (4) duties and responsibilities of guardians, guardians ad litem, attorneys, and court personnel in guardianship proceedings;*
- (5) standard definitions and procedures for determining incapacity;*
- (6) standards for surrogate decision making;*
- (7) the doctrine of the least-restrictive alternative;*
- (8) the dispute resolution process, especially its application to elderly persons and persons with disabilities; and*
- (9) successful programs and funding efforts for addressing the court-related needs of elderly persons and persons with disabilities.*

SECTION 2. Subchapter B, Chapter 25, Government Code, is amended by adding Section 25.0025 to read as follows:

Sec. 25.0025. COURT INVESTIGATORS. (a) The judge of a statutory probate court shall appoint a court investigator. One person shall serve as the court investigator for all statutory probate courts in the county unless the commissioners court has authorized additional investigators. The commissioners court may authorize additional court investigators if necessary.

(b) The commissioners court shall set the salary of a court investigator.

(c) *On the filing of an application for guardianship and before the appointment of an attorney ad litem, a court investigator shall investigate the circumstances alleged in the application to determine whether a less restrictive alternative than guardianship is appropriate.*

(d)(1) *A court investigator shall:*

(A) *supervise the court visitor program established under Section 127, Texas Probate Code;*

(B) *investigate a complaint received from any person about a guardianship and report to the judge, if necessary; and*

(C) *perform other duties as assigned by the judge.*

(2) *Nothing herein shall supersede any duty or obligation of another to report or investigate abuse or neglect under any statute of this state.*

(e) *After making an investigation under Subsection (c) or (d), a court investigator shall file with the court a report of the court investigator's findings and conclusions. Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Civil Evidence. In a contested case, the court investigator shall provide copies of the report to the attorneys for the parties before the earlier of:*

(1) *the seventh day after the day the report is completed; or*

(2) *the sixth day before the day the trial is scheduled to begin.*

SECTION 3. Subchapter H, Chapter 81, Government Code, is amended by adding Section 81.114 to read as follows:

Sec. 81.114. ATTORNEY INSTRUCTION RELATED TO GUARDIANSHIP ISSUES.

(a) *The state bar shall provide a course of instruction for attorneys who represent parties in guardianship cases or who serve as court-appointed guardians.*

(b) *The state bar shall adopt the rules necessary to accomplish the purposes of this section.*

(c) *The instruction must include information about:*

(1) *statutory and case law relating to guardianships;*

(2) *the aging process and the nature of disabilities;*

(3) *the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and related case and statutory law, rules, and compliance methods;*

(4) *the principles of equal access and accommodation;*

(5) *the use of community resources for the disabled; and*

(6) *avoidance of stereotypes through a focus on people's individual abilities, support needs, and inherent individual value.*

(d) *The instruction may include information about:*

(1) *substantive areas of law concerning the needs of elderly persons and persons with disabilities;*

(2) *barriers to physical access and methods to overcome those barriers;*

(3) *communication needs of elderly persons and persons with disabilities and the technology available to provide access to communication;*

(4) *duties and responsibilities of guardians, guardians ad litem, attorneys, and court personnel in guardianship proceedings;*

(5) *standard definitions and procedures for determining incapacity;*

(6) *standards for surrogate decision making;*

(7) *the doctrine of the least-restrictive alternative;*

(8) *the dispute resolution process, especially its application to elderly persons and persons with disabilities; and*

(9) *successful programs and funding efforts for addressing the court-related needs of elderly persons and persons with disabilities.*

SECTION 4. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.044 to read as follows:

Sec. 533.044. MEMORANDUM OF UNDERSTANDING ON ASSESSMENT TOOLS.

(a) *The department, Texas Department of Health, and Texas Department of Human Services by rule shall adopt a joint memorandum of understanding that requires the use of a uniform assessment tool to assess whether an elderly person, a person with mental retardation, a person with a developmental disability, or a person who is suspected of being a person with mental retardation or a developmental disability and who is receiving services in a facility regulated or operated by the department, Texas Department of Health, or Texas Department of Human Services needs a guardian of the person or estate, or both.*

(b) *The memorandum must prescribe:*

- (1) *the facilities that must use the assessment; and*
- (2) *the circumstances in which the facilities must use the assessment.*

(c) *Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.*

SECTION 5. Section 48.021, Human Resources Code, is amended by adding Subsection (e) to read as follows:

(e) *The department shall file an application under Section 110A or 131(b) of the Texas Probate Code to be appointed guardian of the person and estate of an individual who is a minor, is a conservatee of the department, and, because of a physical or mental condition, will be substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs when the individual becomes an adult.*

SECTION 6. Section 3, Texas Probate Code, is amended by adding Subdivision (mm) to read as follows:

(mm) *"Private professional guardian" means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.*

SECTION 7. Part 3, Chapter V, Texas Probate Code, is amended to read as follows:

PART 3. PERMANENT GUARDIANSHIP PROCEEDINGS

SUBPART A. GENERAL PROVISIONS

Sec. 108. DEFINITIONS. In this part:

(1) *"Guardianship program" means a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.*

(2) *"Incapacitated person" means:*

(A) *a minor;*

(B) *an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs;*

(C) *a missing person; or*

(D) *a person who must have a guardian appointed to receive funds due the person from any governmental source.*

(3) *"Missing person" means a person reported by an executive department of the United States to be a prisoner of war or missing in the course of public service to the United States.*

(4) *"Person" includes natural persons, corporations, and guardianship programs.*

(5) *"Proposed ward" means a person alleged to be incapacitated in a guardianship proceeding.*

Sec. 108A. POLICY; PURPOSE OF GUARDIANSHIP. A court may appoint a guardian with full authority over an incapacitated person or may grant a guardian limited

authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the person. If the person is not a minor, the court may not use age as the sole factor in determining whether to appoint a guardian for the person. In creating a guardianship that gives a guardian limited power or authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person.

Sec. 108B. LAWS APPLICABLE TO GUARDIANSHIPS. (a) To the extent applicable and not inconsistent with other provisions of this code, the laws and rules governing estates of decedents apply to and govern guardianships.

(b) A reference in other sections of this code or in other law to a person who is mentally, physically, or legally incompetent, a person who is judicially declared incompetent, an incompetent or an incompetent person, a person of unsound mind, or a habitual drunkard means an incapacitated person.

SUBPART B. APPLICATION AND HEARING TO APPOINT GUARDIAN

Sec. 109. JURISDICTION. A court exercising original probate jurisdiction may appoint a guardian under this part for the person or estate, or both, of an incapacitated person.

Sec. 109A. VENUE. (a) Except as otherwise authorized by this section, a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person shall be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

(b) A proceeding for the appointment of a guardian for the person or estate, or both, of a minor may be brought:

(1) in the county in which both the minor's parents reside;

(2) if the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator of the minor resides or in the county in which the parent who is the joint managing conservator with the greater period of physical possession of and access to the minor resides;

(3) if only one parent is living and the parent has custody of the minor, in the county in which that parent resides;

(4) if both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or

(5) if both parents of a minor child have died in a common disaster and there is no evidence that the parents died other than simultaneously, in the county in which both deceased parents resided at the time of their simultaneous deaths if they resided in the same county.

(c) A proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee's residence if the appointee resides in this state.

(d) A proceeding for the appointment of a guardian for the estate of a missing person may be brought:

(1) in the county in which the missing person's spouse resides;

(2) if there is no spouse, in the county in which a parent or child of the missing person resides; or

(3) if there is no spouse, parent, or child, in the county in which the missing person's next of kin resides.

(e) A court may transfer a guardianship proceeding to any court having venue in the same manner as provided for transfer of probate proceedings in Section 8 of this code.

Sec. 110. STANDING TO COMMENCE OR CONTEST PROCEEDING. (a) Except as provided by Subsection (b) of this section, any person has the right to commence any

guardianship proceeding or to appear and contest any guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:

(1) file an application to create a guardianship for the proposed ward or incapacitated person;

(2) contest the creation of a guardianship for the proposed ward or incapacitated person; or

(3) contest the appointment of a person as a guardian of the person or estate, or both, of the proposed ward or incapacitated person.

Sec. 110A. APPLICATION; CONTENTS. Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue. The application must be sworn to by the applicant and state:

(1) the name, sex, date of birth, and address of the proposed ward;

(2) the name, relationship, and address of the person the applicant desires to have appointed as guardian;

(3) the social security number of the proposed ward and of the person the applicant desires to have appointed as guardian;

(4) whether guardianship of the person or estate, or both, is sought;

(5) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation of rights requested to be included in the court's order of appointment;

(6) the facts requiring that a guardian be appointed and the interest of the applicant in the appointment;

(7) the nature and description of any guardianship of any kind existing for the proposed ward in this or 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 requested term, if known, of the guardianship;

(11) 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;

(12) if the proposed ward is a minor, the names of the parents and next of kin of the proposed ward and whether either or both of the parents are deceased;

(13) if the proposed ward is a minor, whether the minor was the subject of a legal or conservatorship proceeding within the preceding two-year period and, if so, the court involved, the nature of the proceeding, and the final disposition, if any, of the proceeding;

(14) if the proposed ward is 60 years of age or older, the names and addresses, to the best of the applicant's knowledge, of the proposed ward's spouse, siblings, and children or, if there is no spouse, sibling, or child, the names and addresses of the proposed ward's next of kin;

(15) if the proposed ward is a missing person:

(A) the last known residence of the missing person;

(B) the name of the executive department of the United States reporting the proposed ward as a missing person, the date of the report, and the last known whereabouts of the missing person; and

(C) the names and addresses of the missing person's spouse, children, and parents or, if there is no spouse, child, or parent, the names and addresses of the missing person's next of kin;

(16) facts showing that the court has venue over the proceeding; and

(17) if applicable, that the person whom the applicant desires to have appointed as a guardian is a private professional guardian who has complied with the requirements of Section 126 of this code.

Sec. 110B. COURT'S INITIATION OF GUARDIANSHIP PROCEEDINGS. *If a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person and the person does not have a guardian in this state, the court shall appoint a guardian ad litem or court investigator to investigate and file an application for the appointment of a guardian of the person or estate, or both, of the person believed to be incapacitated.*

Sec. 110C. APPOINTMENT OF ATTORNEY AD LITEM AND INTERPRETER. (a) *In a proceeding under this chapter for the appointment of a guardian for a person other than a missing person, the court shall appoint an attorney ad litem to represent the interests of the proposed ward. The attorney shall be supplied with copies of all of the current records in the case and may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.*

(b) *To be eligible for appointment as an attorney ad litem, a person must be certified by the State Bar of Texas as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar.*

(c) *For certification under Subsection (b) of this section, the state bar may not require more than four hours of credit.*

(d) *A certificate issued under Subsection (b) of this section expires on the second anniversary of the date the certificate was issued. A person whose certificate has expired must obtain a new certificate to be eligible for appointment as an attorney ad litem. The applicant is not required to again complete the course of study required by Subsection (b) of this section unless the state bar determines that the course has changed substantially since the person last completed the course.*

(e) *Subsections (b) through (d) of this section do not apply to a person who served as attorney ad litem in a guardianship proceeding before September 1, 1993.*

(f) *At the time of the appointment of the attorney ad litem, the court shall also appoint a language interpreter or a sign interpreter if necessary to ensure effective communication between the proposed ward and the attorney.*

Sec. 110D. DUTIES OF ATTORNEY AD LITEM. (a) *An attorney ad litem appointed under Section 110C of this code to represent a proposed ward shall interview the proposed ward within a reasonable time before the hearing. To the greatest extent possible, the attorney shall discuss with the proposed ward the law and facts of the case, the proposed ward's legal options regarding disposition of the case, and the grounds on which guardianship is sought.*

(b) *Before the hearing, the attorney shall review the application for guardianship, certificates of current physical, medical, and intellectual examinations, and all of the proposed ward's relevant medical, psychological, and intellectual testing records.*

Sec. 111. NOTICE AND CITATION. (a) *On the filing of an application for guardianship, notice shall be issued and served as provided in this section.*

(b) *The court clerk shall issue a notice stating that the application for guardianship was filed, the name of the proposed ward, and the name of the applicant. The notice must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if they wish to contest the application.*

(c) *A copy of the notice shall be posted, and the sheriff or other officer posting the notice shall return the original notice, officially signed and marked in writing with the time and place of posting.*

(d) *The sheriff or other officer posting the notice shall personally serve a copy of the notice, with citation to appear and answer the application for guardianship, to:*

(1) *the proposed ward, unless the proposed ward is a missing person, or a parent with whom the minor resides if the proposed ward is a minor who is 14 years of age or younger;*

(2) the proposed ward's parents; and

(3) any conservator or person having control of the care and welfare of the proposed ward.

(e) The court clerk, at the applicant's request, or the applicant shall mail a copy of the notice by registered or certified mail, return receipt requested, to the following persons if their whereabouts are known or can be reasonably ascertained:

(1) the spouse, the parents, all siblings, and all children of a proposed ward;

(2) the administrator of a nursing home facility or similar facility in which the proposed ward resides;

(3) the operator of a residential facility in which the proposed ward resides; and

(4) a person whom the applicant knows to hold a power of attorney signed by the proposed ward.

(f) A person other than the proposed ward who is entitled to receive notice or personal service of citation under Subsections (d) and (e) of this section may, in person or by attorney ad litem, by writing filed with the clerk, waive the receipt of notice or the issuance and personal service of citation.

(g) The court may not act on an application for the creation of a guardianship until the Monday following the expiration of the 10-day period beginning the date service of notice and citation has been made as provided by Subsections (b), (c), (d), and (f) of this section. The validity of a guardianship created under this chapter is not affected by the failure of the clerk or applicant to comply with the requirements of Subsection (e) of this section.

Sec. 112. USE OF RECORDS IN GUARDIANSHIP PROCEEDINGS. (a) Before a hearing may be held for the appointment of a guardian, current and relevant medical, psychological, and intellectual testing records of the proposed ward must be provided to the attorney ad litem appointed to represent the proposed ward unless:

(1) the proposed ward is a minor, a missing person, or a person who must have a guardian appointed to receive funds due the person from any governmental source; or

(2) the court makes a finding on the record that no current or relevant records exist and that examining the proposed ward for the purpose of creating the records is impractical.

(b) Current medical, psychological, and intellectual testing records are a sufficient basis for a determination of guardianship.

(c) The findings and recommendations contained in the medical, psychological, and intellectual testing records are not binding on the court.

Sec. 112A. EXAMINATIONS AND REPORTS. (a) The court may not grant an application to create a guardianship for an incapacitated person, other than a person whose alleged incapacity is mental retardation, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state dated not later than the 120th day before the date of the hearing on the application that:

(1) states that, in the opinion of the physician, the person for whom the appointment of a guardian is sought is incapacitated; and

(2) generally describes the extent of the incapacity.

(b) Except as provided by Subsection (c) of this section, if the court determines it is necessary, the court may appoint the necessary physicians to examine the proposed ward. A physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Subsection (c) of this section, shall make available to an attorney ad litem appointed to represent the proposed ward, for inspection, a report that:

(1) describes the nature and degree of incapacity, including the medical history if reasonably available;

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

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

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

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

(6) includes any other information required by the court.

(c) If the basis of the proposed ward's alleged incapacity is mental retardation, the proposed ward shall be examined by a physician or psychologist licensed in this state or certified by the Texas Department of Mental Health and Mental Retardation to perform the examination, unless there is written documentation filed with the court that shows that the proposed ward has been examined according to the rules adopted by the Texas Department of Mental Health and Mental Retardation not earlier than six months before the date of a hearing to appoint a guardian for the proposed ward. The physician or psychologist shall conduct the examination according to the rules adopted by the Texas Department of Mental Health and Mental Retardation and shall submit written findings and recommendations to the court.

Sec. 112B. **PAYMENT FOR PROFESSIONAL SERVICES.** The court shall order the payment of a fee set by the court as compensation to the attorneys, mental health professionals, and interpreters appointed under this subpart to be taxed as costs in the case. If after examining the proposed ward's assets the court determines the proposed ward is unable to pay for services provided by an attorney, a mental health professional, or an interpreter appointed under this subpart, the county is responsible for the cost of those services. This section applies to incapacitated persons other than minors.

Sec. 112C. **COMPENSATION OF CERTAIN ATTORNEYS.** (a) A court that creates a guardianship for a ward under this code, on request of a person who filed an application to be appointed guardian of the proposed ward, may authorize compensation of an attorney who represents the person at the application hearing from available funds of the ward's estate regardless of whether that person is appointed the ward's guardian.

(b) The court may not authorize compensation under this section unless the court finds that the attorney acted in good faith and for just cause in the attorney's representation of the person who filed the application.

Sec. 113. **HEARING; RIGHT TO JURY TRIAL.** (a) A proposed ward other than a missing person must be present at a hearing to appoint a guardian unless the court, on the record, determines that a personal appearance is not necessary. The court may close the hearing if the proposed ward or the proposed ward's counsel requests a closed hearing.

(b) The proposed ward is entitled, on request, to a jury trial.

(c) At the hearing, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult person to feed, clothe, and shelter himself or herself, to care for the individual's own physical health, and to manage the individual's property or financial affairs;

(2) ascertain the age of any proposed ward who is a minor;

(3) inquire into the governmental reports for any missing person or person who must have a guardian appointed to receive funds due the person from any governmental source; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed guardian.

Sec. 113A. **FINDINGS REQUIRED.** (a) Before appointing a guardian, the court must find by clear and convincing evidence that:

(1) the proposed ward is an incapacitated person;

(2) the court has venue of the case;

(3) 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;

(4) the rights of persons or property will be protected by the appointment of a guardian;

(5) 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

(6) if the guardian is appointed for a missing person, the person was reported missing by an executive department of the United States at least six months earlier than the date of the filing of the application and currently is missing.

(b) The court may not grant an application to create a guardianship unless the applicant proves each element required by this code. A determination of incapacity of an adult proposed ward, other than a missing person or a person who must have a guardian appointed to receive funds due the person from any governmental source, must be evidenced by recurring acts or occurrences within the preceding six-month period and not by isolated instances of negligence or bad judgment.

(c) A court may not appoint a guardian of the estate of a minor when a payment of claims is made under Section 144 of this code.

(d) A certificate of the executive head or a representative of the bureau, department, or agency of the government to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due the proposed ward from that governmental entity is prima facie evidence of the necessity for the appointment of a guardian.

Sec. 113B. ORDER OF COURT. (a) If it is found that an adult person possesses the capacity to care for himself or herself and to manage the individual's property as would a reasonably prudent person, the court shall dismiss the application for guardianship.

(b) If it is found that the proposed ward is totally without capacity as provided by this code to care for himself or herself and to manage the individual's property, the court shall include that determination as a finding of fact in its final order in the proceeding, and the court may appoint a guardian of the individual's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(c) If it is found that the person lacks the capacity to do some but not all of the tasks necessary to care for himself or herself or to manage the individual's property, the court may appoint a guardian with limited powers and permit the individual to care for himself or herself or to manage the individual's property commensurate with the individual's ability.

(d) An order appointing a guardian must contain findings of fact and specify:

(1) the information required by Section 184 of this code;

(2) the specific powers, limitations, or duties of the guardian with respect to the care of the person or the management of the person's property by the guardian; and

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to expend for the education and maintenance of the person under Section 236 of this code.

(e) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

Sec. 114. NONRESIDENT AS WARD. Guardianship of the estate of a nonresident incapacitated person who owns property in this state may be granted, if necessary, in the same manner as for the property of a resident of this state. A court in the county in which the principal estate of the ward is located has jurisdiction to appoint a guardian. The court shall take all actions and make all necessary orders with respect to the estate of the ward for the maintenance, support, care, or education of the ward out of the proceeds of the ward's estate in the same manner as if the ward were a resident of this state and was sent abroad by the court for education or treatment. If a qualified nonresident guardian of the estate later qualifies in this state under Section 118 of this code, the court shall close the resident guardianship.

SUBPART C. SELECTION OF GUARDIAN

Sec. 115. PERSONS INELIGIBLE TO BE GUARDIANS. A person may not be appointed guardian if the person is:

(1) a minor;

- (2) a person whose conduct is notoriously bad;
- (3) an incapacitated person;
- (4) a person who is a party or whose parent is a party to a lawsuit concerning or affecting the welfare of the proposed ward;
- (5) a person indebted to the proposed ward unless the person pays the debt before appointment;
- (6) a person asserting a claim adverse to the proposed ward or the proposed ward's property, real or personal;
- (7) a person who, because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the ward or the ward's estate;
- (8) a person, institution, or corporation found unsuitable by the court; or
- (9) a person disqualified in a declaration made under Section 117B of this code.

Sec. 115A. PREFERENCE OF WARD. 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 not inconsistent with other provisions of this code, shall give due consideration to the preference indicated by the incapacitated person.

Sec. 116. SELECTION OF GUARDIAN BY MINOR. (a) When an application is filed for the guardianship of the person or estate, or both, of a minor at least 14 years of age, the minor, subject to the court's approval, may choose the guardian by writing filed with the clerk.

(b) A minor at least 14 years of age may select another guardian of either the minor's person or estate, or both, if the minor has a guardian appointed by the court or the minor has a guardian appointed by will or written declaration of the parent of the minor and that guardian dies, resigns, or is removed from guardianship. If the court is satisfied that the person selected is suitable and competent, it shall make the appointment and revoke the letters of guardianship of the former guardian. The minor shall make the selection by filing an application in open court in person or by attorney.

Sec. 116A. GUARDIANS OF MINORS. (a) Except as provided by Section 116 of this code, the selection of a guardian for a minor is governed by this section.

(b) If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents is entitled to be appointed guardian of the children's estates. If the parents disagree as to which parent should be appointed, the court shall make the appointment on the basis of which parent is better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal, and the guardianship of their minor children shall be assigned to one or the other, considering only the best interests of the children.

(c) In appointing a guardian for a minor orphan:

(1) if the last surviving parent did not appoint a guardian, the nearest ascendant in the direct line of the minor is entitled to guardianship of both the person and the estate of the minor;

(2) if more than one ascendant exists in the same degree in the direct line, one ascendant shall be appointed, according to circumstances and considering the best interests of the minor;

(3) if the minor has no ascendant in the direct line, the nearest of kin shall be appointed, and if there are two or more persons in the same degree of kinship, one shall be appointed, according to circumstances and considering the best interests of the minor; and

(4) if no relative of the minor is eligible to be guardian or if no eligible person applies to be guardian, the court shall appoint a qualified person as guardian.

(d) The surviving parent of a minor may by will or written declaration appoint any eligible person to be guardian of the person of the parent's minor children after the death of

the parent. On compliance with this code, an eligible person is also entitled to be appointed guardian of the children's estates after the death of the parent.

Sec. 117. GUARDIANS OF PERSONS OTHER THAN MINORS. The court shall appoint a guardian for a person other than a minor according to the circumstances and considering the best interests of the ward. If the court finds that two or more eligible persons are equally entitled to be appointed guardian:

(1) the ward's spouse is entitled to the guardianship in preference to any other person if the spouse is one of the eligible persons;

(2) the eligible person nearest of kin to the ward is entitled to the guardianship if the ward's spouse is not one of the eligible persons; or

(3) the court shall appoint the eligible person who is best qualified to serve as guardian if:

(A) the persons entitled to serve under Subdivisions (1) and (2) of this section refuse to serve;

(B) two or more persons entitled to serve under Subdivision (2) of this section are related in the same degree of kinship to the ward; or

(C) neither the ward's spouse or any person related to the ward is an eligible person.

Sec. 117A. PRESUMPTION CONCERNING BEST INTEREST. It is presumed not to be in the best interests of a ward to appoint a person as guardian of the ward if the person has been finally convicted of any sexual offense, sexual assault, aggravated assault, aggravated sexual assault, injury to a child, abandoning or endangering a child, or incest.

Sec. 117B. DESIGNATION OF GUARDIAN BEFORE NEED ARISES. (a) A person other than an incapacitated person may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant if the declarant becomes incapacitated. The declaration must be attested to by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declarant may, in the declaration, disqualify named persons from serving as guardian of the declarant's person or estate, and the persons named may not be appointed guardian under any circumstances.

(c) The declaration must have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration. A properly executed and witnessed declaration and affidavit are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

(d) The declaration and affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed. Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian under this code. If the designated guardian does not qualify, is dead, refuses to serve, resigns, dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

(e) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

(f) If a declarant designates the declarant's spouse to serve as guardian under this section and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

(g) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian. The following forms may but need not be used:

DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

I, _____, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate _____ to serve as guardian of my person, _____ as first alternate guardian of my person, _____ as second alternate guardian of my person, and _____ as third alternate guardian of my person.

2. I designate _____ to serve as guardian of my estate, _____ as first alternate guardian of my estate, _____ as second alternate guardian of my estate, and _____ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person: _____, _____, and _____

5. I expressly disqualify the following persons from serving as guardian of my estate: _____, _____, and _____

Signed this _____ day of _____, 19__

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Guardian and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and affiants on this _____ day of _____, 19__

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

Sec. 117C. ONLY ONE PERSON APPOINTED GUARDIAN. Only one person may be appointed as guardian of the person or estate, but one person may be appointed guardian of the person and another of the estate if it is to the advantage of the ward. Nothing in this section prohibits the joint appointment of a husband and wife or of coguardians appointed under the laws of a jurisdiction other than this state.

Sec. 118. NONRESIDENT GUARDIAN. (a) A nonresident of this state may be appointed and qualified as guardian or coguardian of a nonresident ward's estate located in this state in the same manner provided by this code for the appointment and qualification of a resident as guardian of the estate of an incapacitated person if:

(1) a court of competent jurisdiction in the geographical jurisdiction in which the nonresident resides appointed the nonresident guardian;

(2) the nonresident is qualified as guardian or as a fiduciary legal representative by whatever name known in the foreign jurisdiction of the property or estate of the ward located in the jurisdiction of the foreign court; and

(3) with the written application for appointment in the county court of any county in this state in which all or part of the ward's estate is located, the nonresident files a complete transcript of the proceedings from the records of the court in which the nonresident applicant was appointed, showing the applicant's appointment and qualification as the guardian or fiduciary legal representative of the ward's property or estate.

(b) The transcript required by Subsection (a) of this section must be certified and attested to by the clerk of the foreign court or the officer of the court charged by law with custody of the court records, under the court seal, if any. The certificate of the judge, chief justice, or presiding magistrate, as applicable, of the foreign court must be attached to the transcript, certifying that the attestation of the transcript by the clerk or legal custodian of the court records is in correct form.

(c) If the nonresident applicant meets the requirements of this section, the court shall enter an order appointing the nonresident, without the necessity of any notice or citation. After the nonresident applicant qualifies in the manner required of resident guardians and files with the court a power of attorney appointing a resident agent to accept service of process in all actions or proceedings with respect to the estate, the clerk shall issue the letters of guardianship to the nonresident guardian.

(d) After qualification, the nonresident guardian shall file an inventory and appraisal of the estate of the ward in this state subject to the jurisdiction of the court as in ordinary cases and is subject to all applicable provisions of this code with respect to the handling and settlement of estates by resident guardians.

Sec. 118A. DELIVERY OF PROPERTY TO NONRESIDENT GUARDIAN. The court may order a resident executor, administrator, or guardian in possession of any of the estate of a ward to deliver the property to a qualified and acting nonresident guardian of the ward.

Sec. 118B. APPOINTMENT OF PRIVATE PROFESSIONAL GUARDIANS. A court may not appoint a private professional guardian to serve as a guardian or permit a private professional guardian to continue to serve as a guardian under this code if the private professional guardian has not complied with the requirements of Section 126 of this code.

SUBPART D. CERTAIN POWERS AND DUTIES OF GUARDIAN

Sec. 119. RIGHTS AND POWERS RETAINED BY WARD. An incapacitated person for whom a guardian is appointed retains all legal and civil rights and powers except those designated by court order as legal disabilities by virtue of having been specifically granted to the guardian.

Sec. 120. OATH AND BOND OF GUARDIAN. The guardian shall take and subscribe an oath required by this code. The guardian shall file a bond in accordance with Section 194 of this code. In cases where a guardianship program is appointed guardian, the judge may consider requiring a single bond to cover all of the wards of the guardianship program.

Sec. 121. AUTHORITY OF GUARDIAN. After the filing of the oath and bond, the order of the court appointing the guardian is effective on the issuance of letters of guardianship. The order is evidence of the authority of the guardian to act within the scope of the powers and duties set forth in the order.

Sec. 121A. ACCOUNT AND INVENTORY. (a) Except as provided by Subsection (b) of this section, a guardian of an adult shall annually file, not later than the 60th day after the anniversary date of the guardian's appointment, unless the court extends that time period, a

written verified account of the guardian's administration of the person and of the estate of the adult.

(b) The court may allow the account of the estate of the adult to be filed at intervals of up to 36 months if an adequate bond or safekeeping agreement is in effect and the ward's income is governmental benefits that the guardian by court order has to use for maintenance and support of the ward. The court shall instruct the guardian that any substantial increase in income or assets must be reported not later than the 30th day after the date of the substantial increase.

(c) Not later than the 90th day after the date of appointment, a guardian who is managing properties shall prepare and file a verified inventory of all the property of the incapacitated person in the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(d) A guardian of an adult shall file a written verified account of the guardian's administration of the person and of the estate of the adult not later than the 30th day after termination of the guardianship.

Sec. 121B. MANAGEMENT OF PROPERTY. To the extent that an order of the court gives a guardian control of any property of an incapacitated person, the guardian shall take care of and manage the property as a prudent person would manage the person's own property.

Sec. 121C. CARE OF WARD; COMMITMENT. (a) The guardian of an adult may expend funds of the guardianship as provided by court order to care for and maintain the incapacitated person. The guardian may apply for residential care and services provided by a public or private facility on behalf of an incapacitated person who has decision-making ability if the person agrees to be placed in the facility. The guardian shall report the condition of the person to the court at regular intervals at least annually, unless the court orders more frequent reports. If the person is receiving residential care in a public or private residential care facility, the guardian shall include in any report to the court a statement as to the necessity for continued care in the facility.

(b) Except as provided by Subsection (c) or (d) of this section, a guardian may not voluntarily admit an incapacitated person to a public or private inpatient psychiatric facility or to a residential care facility operated by the Texas Department of Mental Health and Mental Retardation for care and treatment. If care and treatment in a psychiatric or a residential care facility are necessary, the person or the person's guardian may apply for services under Sections 593.027 and 593.028, Health and Safety Code, or apply to a court to commit the person under Subtitle D, Title 7, Health and Safety Code (Persons with Mental Retardation Act), Subtitle C, Title 7, Health and Safety Code (Texas Mental Health Code), or Chapter 462, Health and Safety Code.

(c) A guardian of a person younger than 16 years of age may voluntarily admit an incapacitated person to a public or private inpatient psychiatric facility for care and treatment.

(d) A guardian of a person may voluntarily admit an incapacitated person to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code.

Sec. 121D. NONRESIDENT GUARDIAN'S REMOVAL OF WARD'S PROPERTY FROM STATE. A nonresident guardian, whether or not qualified under this code, may remove personal property of the ward out of the state if:

(1) the removal does not conflict with the tenure of the property or the terms and limitations of the guardianship under which the property is held; and

(2) all debts known to exist against the estate in this state are paid or secured by bond payable to and approved by the judge of the court in which guardianship proceedings are pending in this state.

SUBPART E. TERMINATION, MODIFICATION, REMOVAL, OR RESIGNATION

Sec. 122. TERM OF APPOINTMENT OF GUARDIAN. (a) Unless otherwise discharged as provided by law, a guardian remains in office until the estate is closed.

(b) *The guardianship shall be settled and closed when the incapacitated person:*

(1) *dies and, if the person was married, the person's spouse qualifies as survivor in community;*

(2) *is found by the court to have full capacity to care for himself or herself and to manage the person's property;*

(3) *is no longer a minor;*

(4) *returns to the United States, if the person was a missing person and the court grants the motion of any interested person to vacate the original order of guardianship; or*

(5) *no longer must have a guardian appointed to receive funds due the person from any governmental source.*

(c) *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 incapacitated person no longer requires the guardianship may not be filed without special leave.*

(d) *Except as provided by Subsection (c) of this section, a ward or any person interested in the ward's welfare may petition the court for an order:*

(1) *finding that the ward no longer needs the guardianship and ordering that the guardian resign or be removed;*

(2) *finding that the ward lacks the capacity to do some or all of the tasks necessary to care for himself or herself or to manage the ward's property and granting additional powers or duties to the guardian with respect to the care of the ward or the management of the ward's property by the guardian; or*

(3) *finding that the ward has regained the capacity to do some but not all of the tasks necessary to care for himself or herself or to manage the ward's property and:*

(A) *limiting the powers or duties of the guardian with respect to the care of the ward or the management of the ward's property by the guardian; and*

(B) *permitting the ward to care for himself or herself or to manage the ward's property commensurate with the ward's ability.*

(e) *A request for an order under this section may be made by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.*

(f) *If a nonresident guardian of a nonresident ward qualifies as guardian under Subpart C of this part, the guardianship of any resident guardian may be terminated.*

Sec. 123. REMOVAL OR RESIGNATION OF GUARDIAN. (a) *On petition of the incapacitated person or any person interested in the person's welfare and on service of notice as directed by the court, the court may remove a guardian if the court finds removal in the best interests of the person.*

(b) *On petition of the guardian, the court may accept the guardian's resignation.*

Sec. 123A. ANNUAL DETERMINATION WHETHER GUARDIANSHIP SHOULD BE CONTINUED, MODIFIED, OR TERMINATED. (a) *A court in which a guardianship proceeding is pending shall review annually each guardianship to determine whether the guardianship should be continued, modified, or terminated.*

(b) *In reviewing a guardianship as provided by Subsection (a) of this section, a statutory probate court shall:*

(1) *review a report prepared by a court investigator under Section 25.0025, Government Code;*

(2) *review a report prepared by a court visitor under Section 127 of this code; or*

(3) *conduct a hearing if necessary.*

(c) *In reviewing a guardianship as provided by Subsection (a) of this section, a court that is not a statutory probate court may use any appropriate method determined by the court according to the court's caseload and the resources available to the court.*

(d) *A determination under this section must be in writing and filed with the clerk.*

Sec. 124. APPOINTMENT OF SUCCESSOR GUARDIAN. (a) If a guardian dies, resigns, or is removed, the court may, on application and on service of notice as directed by the court, appoint a successor guardian.

(b) A successor guardian has the powers and rights and is subject to all of the duties of the preceding guardian.

SUBPART F. REMOVAL OF GUARDIANSHIP TO ANOTHER COUNTY

Sec. 125. APPLICATION FOR REMOVAL OF GUARDIANSHIP. When a guardian or any other person desires to remove the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for moving the transaction of business.

Sec. 125A. NOTICE. (a) On filing an application to remove a guardianship to another county, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the application should not be granted.

(b) If an application is filed by a person other than the guardian, the guardian shall be cited by personal service to appear and show cause why the application should not be granted.

Sec. 125B. COURT ACTION. On hearing an application under Section 125 of this code, if good cause is not shown to deny the application and it appears that removal of the guardianship is in the best interests of the ward, the court shall enter an order authorizing the removal on payment on behalf of the estate of all accrued costs.

Sec. 125C. TRANSCRIPT OF RECORD. When an order of removal is made under Section 125B of this code, the clerk shall record any unrecorded papers of the guardianship required to be recorded and make out a complete certified transcript of all the orders, decrees, judgments, and proceedings in the guardianship. On payment of the clerk's fees, the clerk shall transmit the transcript, with the original papers in the case, to the county clerk of the county to which the guardianship was ordered removed.

Sec. 125D. REMOVAL EFFECTIVE. The order removing a guardianship does not take effect until:

(1) the transcript required by Section 125C of this code is filed in the office of the county clerk of the county to which the guardianship was ordered removed; and

(2) a certificate under the clerk's official seal and reporting the filing of the transcript is filed in the court ordering the removal by the county clerk of the county to which the guardianship was ordered removed.

Sec. 125E. CONTINUATION OF GUARDIANSHIP. When a guardianship is removed from one county to another in accordance with this subpart, the guardianship proceeds in the court to which it was removed as if it had been originally commenced in that court. It is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was removed.

Sec. 125F. NEW GUARDIAN MAY BE APPOINTED ON REMOVAL. If it appears to the court that removal of the guardianship is in the best interests of the ward but that because of the removal it will be unduly expensive or unduly inconvenient to the estate for the guardian of the estate to continue to serve in that capacity, the court may in its order of removal revoke the letters of guardianship and appoint a new guardian, and the former guardian shall account for and deliver the estate as provided in this code in a case in which a guardian resigns.

SUBPART G. PRIVATE PROFESSIONAL GUARDIANS

Sec. 126. REGISTRATION OF PRIVATE PROFESSIONAL GUARDIANS. (a) A private professional guardian must apply annually to the clerk of the county having venue over the proceeding for the appointment of a guardian for certification. The application must include a sworn statement containing the following information concerning a private professional guardian or a person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian:

- (1) *educational background and professional experience;*
- (2) *three or more professional references;*
- (3) *the names of all of the wards the private professional guardian or person is or will be serving as a guardian;*
- (4) *the aggregate fair market value of the property of all wards that is being or will be managed by the private professional guardian or person;*
- (5) *place of residence, business address, and business telephone number; and*
- (6) *whether the private professional guardian or person has ever been removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, and the style of the suit, the docket number, and the court having jurisdiction over the proceeding.*

(b) *The application must be accompanied by a nonrefundable fee set by the clerk in an amount necessary to cover the cost of administering this section.*

(c) *The term of the certification begins on the date that the requirements are met and extends through December 31 of the initial year. After the initial year of certification, the term of the certification begins on January 1 and ends on December 31 of each year. A renewal application must be completed during December of the year preceding the year for which the renewal is requested.*

(d) *The clerk shall bring the information received under this section to the judge's attention for review. The judge shall use the information only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.*

Sec. 126A. ACCESS TO CRIMINAL HISTORY RECORDS. (a) *The clerk of the county where venue occurs for 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 a private professional guardian or a person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian.*

(b) *The criminal history record information obtained under this section is for the exclusive use of the court and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated. The clerk may destroy the criminal history information records after the records are used for the purposes authorized by this section.*

(c) *The court shall use the information obtained under this section only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.*

(d) *A person commits an offense if the person releases or discloses any information received under this section without the authorization prescribed by Subsection (b) of this section. An offense under this subsection is a Class A misdemeanor.*

(e) *The clerk may charge a reasonable fee sufficient to recover the costs of obtaining criminal history information records authorized by Subsection (a) of this section.*

SUBPART H. COURT VISITOR PROGRAM

Sec. 127. COURT VISITOR PROGRAM. (a) *Each statutory probate court shall operate a court visitor program to assess the conditions of wards and proposed wards. Another court that has jurisdiction over a guardianship proceeding may operate a court visitor program in accordance with the population needs and financial abilities of the jurisdiction. A court that operates a court visitor program shall use persons willing to serve without compensation to the greatest extent possible.*

(b) *On request by any interested person, including a ward or proposed ward, or on its own motion, and at any time before the appointment of a guardian or during the pendency of a guardianship of the person or estate, a court may appoint a court visitor to evaluate the ward or proposed ward and provide a written report that substantially complies with Subsection (c) of this section.*

(c) A court visitor's report must include:

(1) a description of the nature and degree of capacity and incapacity of the ward or proposed ward, including the medical history of the ward or proposed ward, if reasonably available and not waived by the court;

(2) a medical prognosis and a list of the treating physicians of the ward or proposed ward, when appropriate;

(3) a description of the living conditions and circumstances of the ward or proposed ward;

(4) a description of the social, intellectual, physical, and educational condition of the ward or proposed ward;

(5) a statement that the court visitor has personally visited or observed the ward or proposed ward;

(6) a statement of the date of the most recent visit by the guardian, if one has been appointed;

(7) a recommendation as to any modifications needed in the guardianship or proposed guardianship, including removal or denial of the guardianship; and

(8) any other information required by the court.

(d) The court visitor shall file the report not later than the 14th day after the date of the evaluation conducted by the court visitor, and the court visitor making the report must swear, under penalty of perjury, to its accuracy to the best of the court visitor's knowledge and belief.

(e) A court visitor who has not expressed a willingness to serve without compensation is entitled to reasonable compensation for services in an amount set by the court and to be taxed as costs in the proceeding.

[PART 3. ESTATES OF MINORS AND INCOMPETENTS

~~[Sec. 108. LAWS APPLICABLE TO GUARDIANSHIPS. The provisions, rules, and regulations which govern estates of decedents shall apply to and govern guardianships, whenever the same are applicable and are not inconsistent with any provision of this Code.~~

~~[Sec. 109. PERSONS QUALIFIED TO SERVE AS GUARDIANS. (a) Natural Guardians. If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents, which may be either the father or the mother, is entitled to be appointed guardian of their estates. In event of disagreement as to which parent shall be appointed, the court shall make the appointment on the basis of which one is the better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children, and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, the interest of the children alone being considered.~~

~~(b) Guardians of Orphans. These rules shall govern as to orphans who are minors:~~

~~(1) If the last surviving parent has appointed no guardian, the nearest ascendant in the direct line of such minor is entitled to guardianship of both the person and estate of such minor.~~

~~(2) If there be more than one ascendant in the same degree in the direct line, they are equally entitled. The guardianship shall be given to one or the other, according to circumstances, only the best interest of the orphan being considered.~~

~~(3) If the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin. If there be two or more in the same degree, the guardianship shall be given to one or the other, according to circumstances, only the best interest of the orphan being considered.~~

~~(4) If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint a qualified person to be such guardian.~~

~~[(c) Guardians for Persons Other Than Minors. If a person is an incompetent, or one for whom it is necessary that a guardian be appointed to receive funds due from any governmental source, these rules shall govern:~~

~~[(1) If such person has a spouse who is not disqualified, such spouse shall be entitled to the guardianship in preference to any other person.~~

~~[(2) If there be no qualified spouse, the nearest of kin to such person, who is not disqualified, or in case of refusal by such spouse or nearest of kin to serve, then any other qualified person shall be entitled to the guardianship.~~

~~[(3) Where two or more persons are equally entitled, the guardianship shall be given to one or the other, according to the circumstances, only the best interest of the ward being considered.~~

~~[(d) Presumption Concerning Best Interest. It is presumed not to be in the best interest of a ward to appoint a person as guardian of the ward if the person has been finally convicted of any sexual offense, sexual assault, aggravated assault, aggravated sexual assault, injury to a child, abandoning or endangering a child, or incest.~~

~~[Sec. 110. PERSONS DISQUALIFIED TO SERVE AS GUARDIANS. The following persons shall not be appointed guardians:~~

~~[(a) Minors.~~

~~[(b) Persons whose conduct is notoriously bad.~~

~~[(c) Incompetents.~~

~~[(d) Those who are themselves parties, or whose father or mother is a party to a lawsuit on the result of which the welfare of the person for whom, or for whose estate, a guardian is to be appointed, may depend.~~

~~[(e) Those who are indebted to the person for whom or for whose estate a guardian is to be appointed, unless they pay the debt prior to the appointment, or who are asserting any claim to any property, real or personal, adverse to the person for whom, or for whose estate, the appointment is sought.~~

~~[(g) Those who by reason of inexperience or lack of education, or for other good reason, are shown to be incapable of properly and prudently managing and controlling the ward or his estate.~~

~~[Sec. 111. APPLICATION FOR APPOINTMENT OF PERMANENT GUARDIAN. (a) A proceeding for the appointment of a guardian shall be begun by written application filed in the court of the county having venue thereof. Any person may make such application. Such application shall be sworn and must state:~~

~~[(1) The name, sex, date of birth, and residence, of the person for whom the appointment of a guardian is sought;~~

~~[(2) If a minor, the names of the parents and next of kin of such persons, and whether either or both of the parents are deceased;~~

~~[(c) If a minor, a statement of whether the minor has been the subject of a legal or conservatorship proceeding within the preceding two-year period, and if so, the court involved, the nature of the proceeding, and the final disposition, if any, of the proceeding;~~

~~[(3) If a person 60 years of age or older, the name and address, to the best of the applicant's knowledge, of the person's spouse, brother, sister, and children;~~

~~[(4) A general description of the property comprising such person's estate, if guardianship of the estate is sought;~~

~~[(5) The facts which require that a guardian be appointed;~~

~~[(6) The name, relationship, and address of the person whom the applicant desires to have appointed as guardian;~~

~~[(7) Whether guardianship of the person and estate, or of the person or of the estate, is sought;~~

~~[(8) The social security number of the applicant and of the person for whom the appointment of a guardian is sought; and~~

[9] Such other facts as show that the court has venue over the proceeding.

[b] The portion of the application stating the information required by Subsection (a)(3) of this section shall be sworn to by the applicant.

~~[Sec. 112. JUDGE MAY CAUSE APPLICATION TO BE FILED. Whenever it comes to the knowledge of the county judge that any person whose legal domicile is in his county, or who is found therein, is a minor, a person of unsound mind, or an habitual drunkard, and is without a guardian of his person or of his estate within this State, and that there is probable cause for the exercise of his jurisdiction, he may cause proper proceedings to be commenced and application to be made as provided in the preceding Section for the appointment of a guardian of the person and of the estate of such person, or of either. Upon the filing of such application, process shall be issued and served as hereinafter provided.~~

~~[Sec. 113. CONTEST OF PROCEEDINGS. Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he deems beneficial to the ward.~~

~~[Sec. 113A. APPOINTMENT OF ATTORNEY AD LITEM. In a proceeding under the provisions of this chapter for the appointment of a guardian, the judge shall appoint an attorney ad litem to represent the interests of the person for whom the permanent guardianship is sought and shall allow the attorney ad litem a reasonable fee for his services to be taxed as part of the costs.~~

~~[Sec. 114. FACTS WHICH MUST BE PROVED. Before appointing a guardian, the court must find:~~

~~[(a) That the person for whom a guardian is to be appointed is either a minor, a person of unsound mind, an habitual drunkard, or a person for whom it is necessary to have a guardian appointed to receive funds due such person from any governmental source. In the last case, a certificate of the executive head, or his representative, of the bureau, department, or agency of the government through which such funds are to be paid, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due such person, shall be prima facie evidence of the necessity for such appointment.~~

~~[(b) That the court has venue of the case.~~

~~[(c) That the person to be appointed guardian is not disqualified to act as such and is entitled to be appointed; or, in case no person who is entitled to appointment applies for it, that the person appointed is a proper person to act as such guardian.~~

~~[(d) That the rights of persons or property will be protected by the appointment of a guardian.~~

~~[(e) If the guardian is to be appointed for a minor, that the creation of the guardianship is not for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district in which the student would not otherwise be eligible for enrollment.~~

~~[Sec. 115. JURY TRIAL NOT PREREQUISITE. A jury trial, verdict, and judgment that a person is of unsound mind or an habitual drunkard shall not be prerequisite to an appropriate finding and adjudication by the court and appointment of a guardian for the person alleged to be of unsound mind or an habitual drunkard; nor shall it be necessary that such person be present at the trial.~~

~~[Sec. 116. ONLY ONE PERSON TO BE APPOINTED GUARDIAN. Only one person can be appointed as guardian of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so; but nothing herein shall be held to prohibit the joint appointment of a husband and wife, or of co-guardians duly appointed under the laws of another state, territory or country, or of the District of Columbia.~~

~~[Sec. 117. APPOINTMENT OF GUARDIAN BY WILL. The surviving parent of a minor may, by will or written declaration, appoint any qualified person to be guardian of the person of his or her children after the death of such parent; and, if not disqualified, such person shall also be entitled to be appointed guardian of their estate after the death of such parent, upon compliance with the provisions of this Code.~~

~~[Sec. 118. SELECTION OF GUARDIAN BY MINOR. (a) When No Other Guardian Has Been Appointed. When an application has been filed for the guardianship of the person or estate, or of both, of a minor who has attained the age of fourteen years, such minor may, by writing filed with the clerk, make choice of the guardian, subject to the court's approval of such choice.~~

~~(b) When Another Guardian Has Been Appointed. A minor upon attaining the age of fourteen years may select another guardian either of his person or estate, or both, if such minor has a guardian appointed by the court, or if, having a guardian appointed by will or written declaration of the parent of such minor, such last named guardian dies, resigns, or is removed from guardianship; and the court shall, if satisfied that the person selected is suitable and competent, make such appointment and revoke the letters of guardianship to the former guardian. Such selection shall be made in open court, in person or by attorney, by making application therefor.~~

~~[Sec. 118A. DESIGNATION OF GUARDIAN BEFORE NEED ARISES. (a) A person, other than a minor or an incompetent, may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant in the event the declarant becomes incompetent. The declaration must be attested to by at least two credible witnesses 14 years of age or older who are not named as guardian or alternative guardian in the declaration.~~

~~(b) A declarant may, in the declaration, disqualify named persons from serving as guardian of the declarant's person or estate, and the persons named may not be appointed guardian under any circumstances.~~

~~(c) The declaration must have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration. A properly executed and witnessed declaration and affidavit are prima facie evidence that the declarant was competent at the time he executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.~~

~~(d) The declaration and affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed. Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian under this code. If the designated guardian fails to qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next qualified designated alternate guardian named in the declaration. If the guardian and all alternate guardians fail to qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.~~

~~(e) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including by the subsequent reexecution of the declaration in the manner required for the original declaration.~~

~~(f) If a declarant designates the declarant's spouse to serve as guardian under this section, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.~~

~~(g) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian. The following forms may, but need not, be used:~~

~~[DECLARATION OF GUARDIAN IN THE EVENT OF LATER
[INCOMPETENCE OR NEED OF GUARDIAN~~

~~[I, _____, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.~~

~~[I, I designate _____ to serve as guardian of my person, _____ as first alternate guardian of my person, _____ as second alternate guardian of my person, and _____ as third alternate guardian of my person.~~

[2. I designate _____ to serve as guardian of my estate, _____ as first alternate guardian of my estate, _____ as second alternate guardian of my estate, and _____ as third alternate guardian of my estate.

[3. If any guardian or alternate guardian dies, fails, or refuses to qualify, or resigns, the next named alternate guardian succeeds the prior named guardian and becomes my guardian.

[4. I expressly disqualify the following persons from serving as guardian of my person: _____, _____, and _____

[5. I expressly disqualify the following persons from serving as guardian of my estate: _____, _____, and _____

[Signed this _____ day of _____, 19____

[Declarant

[Witness

Witness

[SELF PROVING AFFIDAVIT

[Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his Declaration of Guardian and that he had made and executed it for the purposes therein expressed. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

[Declarant

[Affiant

Affiant

[Subscribed and sworn to before me by the above named declarant and affiants on this _____ day of _____, 19____

[.....

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

[Sec. 119. FAILURE OF GUARDIAN TO QUALIFY. If a person appointed guardian fails to qualify as such according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead, upon application, but without further notice or citation.

[Sec. 120. TERM OF APPOINTMENT OF GUARDIAN. Unless sooner discharged according to law, a guardian remains in office until the estate is closed in accordance with the provisions of this Code, as hereinafter set out.

[Sec. 121. REMOVAL OF GUARDIANSHIP TO ANOTHER COUNTY MAY BE HAD.

(a) Application for Removal of Guardianship. When a guardian, or any other person, desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking authority to do so, and shall state in such application his reason for desiring such removal.

(b) Sureties on Bond to Be Cited. Upon the filing of such application, the sureties upon the bond of such guardian shall be cited by personal service to appear and show cause why such application should not be granted.

~~[(c) When Guardian Shall Be Cited. If the application for removal is filed by any person other than the guardian, the guardian also shall be cited by personal service to appear and show cause why such application should not be granted.~~

~~[(d) Action of the Court. Upon the hearing of the application, if no good cause be shown to the contrary, and if it appears that the removal of the guardianship would be to the best interest of the ward, the court shall enter an order authorizing such removal upon the payment on behalf of the estate of all costs that have accrued.~~

~~[(e) Transcript of Record. When such order of removal has been made, the clerk shall record all papers of the guardianship required to be recorded that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments, and proceedings in such guardianship; and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the county clerk of the county to which such guardianship has been ordered removed.~~

~~[(f) When Removal Shall Become Effective. The order removing a guardianship shall not take effect until such transcript has been filed in the office of the county clerk of the county to which such guardianship has been ordered removed, and until a certificate of such fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.~~

~~[Sec. 122. CONTINUATION OF GUARDIANSHIP. When a guardianship has been removed from one county to another in accordance with the foregoing provisions of this Code, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have been recorded in the court from which the same has been removed.~~

~~[Sec. 123. NEW GUARDIAN MAY BE APPOINTED UPON REMOVAL. If it appears to the court that the removal of the guardianship would be to the best interest of the ward, but that, by virtue of such removal, it will be unduly expensive to the estate, or unduly inconvenient, for the guardian of the estate to continue to serve in such capacity, the court may in its order of removal, revoke the letters of guardianship and appoint a new guardian. In such event, the former guardian shall account for and deliver the estate as is provided in this Code in cases where guardians resign.~~

~~[Sec. 124. NONRESIDENTS, APPOINTMENT OF GUARDIANS FOR. (a) Appointment of Non-Resident Guardian. A non-resident or non-residents of Texas, being natural persons or corporations, resident of another state or of the District of Columbia, or of any territory, or of any other nation or country, may be appointed and qualified as guardian, or co-guardian of his or its or their non-resident ward's estate situated in Texas in the same manner and by the same procedure provided in this Code for the appointment and qualification of a resident of this State as guardian of the estates of minors, persons of unsound mind, or habitual drunkards; provided that, by proceedings in and decree or decrees of a court of competent jurisdiction in another state, the District of Columbia, a territory, or another nation or country, of his or its or their residence, such non-resident applicant or applicants shall have been previously duly appointed and are still qualified as guardian, co-guardians, tutor, curator, committee, or fiduciary legal representative by whatever name known in such foreign jurisdiction, of the property or estate of his or its or their ward situated within the jurisdiction of such foreign court, whether such ward be a minor, a person of unsound mind, or an habitual drunkard; and provided further that, with his or its or their written application for appointment in the county court of any county in this state where all or part of such ward's estate is situated in this state, such non-resident applicant or applicants file also a full and complete transcript of the proceedings from the records of the court in which he or it or they were appointed in the jurisdiction of his or its or their residence, evidencing his or its or their due appointment and qualification as such guardian, co-guardians, tutor, curator, committee, or other fiduciary legal representative, of his or its or their ward's property or estate, which transcript shall be certified to and attested by the clerk of such foreign court, if there be a clerk, and, if there be no clerk, then by the officer of said court charged by law with the custody of the records thereof, under the seal of such court, if there be a seal, to which transcript shall be attached the certificate of the judge, chief justice or presiding magistrate, as the case may be, of such foreign court to the effect that the said attestation of such transcript by the clerk or legal custodian of the court records is in due~~

form; and provided further that, without the necessity of notice or citation of any character, an order of appointment be made and entered and that such non-resident applicant or applicants thus appointed, qualify by making and filing oath and bond, subject to the court's approval in all respects the same as required of residents thus appointed, and file with the court a power of attorney appointing a resident agent to accept service of process in all actions or proceedings with respect to the estate, whereupon the clerk shall issue the letters of guardianship to such non-resident guardian or co-guardians. Guardians so qualified shall file inventory and appraisement of the estate of the ward in this State subject to the jurisdiction of the court, as in ordinary cases, and shall be subject to and controlled by all applicable provisions of this Code with respect to the handling and settlement of estates by domestic guardians.

~~[(b) Domestic Guardian of Non-Resident.—When a non-resident minor or incompetent owns property in this State, guardianship of such estate may be granted when it is made to appear that a necessity exists therefor, in like manner as if such minor or incompetent resided in this State. The court making the grant of such guardianship shall be in the county in which the principal estate of the ward is situated, and said court shall take all such action and make all such orders with respect to the estate of the ward, for the maintenance, support and care, or the education, if necessary, of the ward, out of the proceeds of such ward's estate, in like manner as if the ward were a resident of this State, and guardianship of the person and estate of the ward had been granted by said court, and the ward had been sent abroad by the court for education or treatment. In the event there be a qualified non-resident guardian of such estate, who later desires to qualify in this State, as hereinabove set out, such non-resident guardian may do so, and it shall be grounds for closing the resident guardianship.~~

~~[Sec. 125. VALIDATION OF CERTAIN LETTERS OF GUARDIANSHIP HERETOFORE ISSUED.—All present existing letters of guardianship heretofore issued to nonresident guardians with or without the procedure, in whole or in part, and with or without notices and citations required in cases of resident guardians, are hereby validated as of their respective dates, in so far as the absence of such procedure, notices, and citations are concerned, as are also all otherwise valid conveyances, mineral leases, and other acts of such guardians so qualified and acting in connection therewith under supporting orders of county and probate courts of this state; provided, however, that this provision shall not be applicable to any letters, conveyance, lease, or other act of such guardian which is involved in any lawsuit pending in this state on the effective date of this Code wherein the absence of such procedure or of such notices or citations is an issue.~~

~~[Sec. 126. REMOVAL OF WARD'S PROPERTY FROM THE STATE.—Upon the recovery of the property of the ward, if it be personal property, any non-resident guardian, whether qualified under provisions of this Code or not, may remove the same out of the state, unless such removal would conflict with the tenure of such property, or with the terms and limitations under which it is held; but there shall be no removal from the state of any of such property until all debts known to exist against the estate in this state have been paid, or until the payment of such debts has been secured by bond payable to and approved by the judge of the court in which the proceedings are pending in this state.~~

~~[Sec. 127. DELIVERY OF PROPERTY.—Any resident executor, administrator, or guardian, having any of the estate of a ward, may be ordered by the court to deliver the same to a duly qualified and acting non-resident guardian of such ward.~~

~~[Sec. 127A. GUARDIANSHIP OF PERSON MISSING ON PUBLIC SERVICE.—(a) Not less than six months after a person is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, any person may file a written application for the appointment of a guardian of the person of the missing person in the court of the county of residence of the missing person's spouse or, if there is no spouse, in the county of residence of a parent or child of the missing person, or if there is no parent or child, in the county of residence of the missing person's next of kin.~~

~~[(b) The application shall state:~~

~~[(1) the name, sex, and last known residence of the person for whom the appointment of a guardian is sought;~~

~~[(2) the executive department issuing the report, the date of the report, and the last known whereabouts of the missing person;~~

~~[(3) the names and addresses of the missing person's spouse, children, and parents or, if there is no spouse, child, or parent, the name and address of the person's next of kin and facts that show that the court has venue of the proceeding;~~

~~[(4) the reason for the appointment and the interest of the applicant in the appointment; and~~

~~[(5) the name, relationship, and address of the person whom the applicant desires to have appointed as guardian.~~

~~[(c) The court shall appoint an attorney to represent the interests of the missing person and shall allow the attorney a reasonable fee, not to exceed \$25, for his services to be taxed as part of the costs.~~

~~[(d) The attorney appointed to represent the interest of the missing person shall be personally served with citation to appear and answer the application for the appointment of a guardian. The clerk of the court shall issue a notice setting forth that an application has been filed for the guardianship of the person of the missing person and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire. The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed officially, stating thereon in writing the time and place that he posted the copy of the notice. In addition to posting the notice, a copy of the notice shall be mailed by registered or certified mail to the spouse, to each child, to each parent of the missing person, and to any other person that the court deems appropriate.~~

~~[(e) Any person has the right to appear and contest the appointment of a particular person as guardian of the missing person, or to contest any guardianship proceeding which he deems to be injurious to the missing person, or to commence a guardianship proceeding which he deems beneficial to the missing person.~~

~~[(f) Before appointing a guardian, the court must find:~~

~~(1) that the person has been reported missing by an executive department of the United States and still is missing;~~

~~(2) that the court has venue of the proceeding and that there is not an existing guardianship of this person;~~

~~(3) that the person applying for appointment as the guardian is a proper person to act as the guardian; and~~

~~(4) that the rights of the missing person will be protected by the appointment of the guardian.~~

~~[(g) After the hearing, the court shall dismiss the application or enter an order appointing a guardian to protect the rights of the missing person and may impose in the order any conditions or restrictions it deems necessary to protect the rights of the missing person. In appointing the guardian, the court shall give preference to the spouse of the missing person, and if there is no spouse shall give preference to parents and children of the missing person.~~

~~[(h) The jurisdiction of the court over the guardianship is continuing. If the missing person returns, on motion of any interested person after a notice, stating that the motion has been filed and specifying the date of a hearing, has been issued and served on the formerly missing person as in other cases, the court shall amend or vacate the original order of guardianship. A copy of the motion shall accompany the notice.]~~

SECTION 8. Subsections (b) and (c), Section 5, Texas Probate Code, are amended to read as follows:

(b) In those counties where there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, [limited guardianships,] and mental illness matters shall be filed and heard in the county court, except that in contested probate matters, the judge of the county court may on his own motion (or shall on the motion of any party to the proceeding, according to the motion) request as provided by Section 25.0022, Government Code, the assignment of a statutory probate judge to hear the contested portion of the proceeding, or transfer the contested portion of the proceeding to the district court, which may then hear contested matter as if originally filed in district court. The

county court shall continue to exercise jurisdiction over the management of the estate with the exception of the contested matter until final disposition of the contested matter is made by the assigned judge or the district court. In contested matters transferred to the district court in those counties, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court. Upon resolution of all pending contested matters, the contested portion of the probate proceeding shall be transferred by the district court to the county court for further proceedings not inconsistent with the orders of the district court. If a contested portion of the proceeding is transferred to a district court under this subsection, the clerk of the district court may perform in relation to the transferred portion of the proceeding any function a county clerk may perform in that type of contested proceeding.

(c) In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, [~~limited guardianships,~~] and mental illness matters shall be filed and heard in such courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judges of such courts may hear any of such matters sitting for the judge of any of such courts. In contested probate matters, the judge of the constitutional county court may on his own motion, and shall on the motion of any party to the proceeding, transfer the proceeding to the statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, which may then hear the proceeding as if originally filed in such court.

SECTION 9. Subsections (a) and (b), Section 131, Texas Probate Code, are amended to read as follows:

(a) Necessity of Appointment. Whenever it appears to the county judge that the interest of any minor, incapacitated person as defined in Section 108 [130A] of this code, or common or habitual drunkard, and his or her estate, or either of them, requires immediate appointment of a personal representative, he shall, by written order, appoint a suitable temporary representative, with such limited powers as the circumstances of the case require, and such appointment may be made permanent, as herein provided.

(b) A written application for the appointment of a temporary guardian may be filed prior to the court's appointment of such guardian but in no case shall such application be filed later than the end of the next business day of the court after appointment of such temporary guardian. The application shall state:

- (i) the name and address of the subject of the guardianship proceeding;
- (ii) the danger to the person or property alleged to be imminent;
- (iii) the type of appointment and the particular protection and assistance being requested;
- (iv) the facts and reasons supporting the allegations and requests;
- (v) the name, address, and qualification of the proposed temporary guardian;
- (vi) the name, address, and interest of the applicant; ~~and~~
- (vii) the social security numbers of the applicant and respondent; *and*
- (viii) *if applicable, that the proposed temporary guardian is a private professional guardian who has complied with the requirements of Section 126 of this code.*

SECTION 10. Section 185, Texas Probate Code, is amended to read as follows:

Sec. 185. ISSUANCE AND RENEWAL OF LETTERS OF GUARDIANSHIP. (a) When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, if bond be required, the clerk shall issue to him a certificate under seal, stating the fact of such appointment and qualification and the date thereof *and the date of expiration*, which certificate shall constitute letters of guardianship, and be evidence of the authority of such person to act as guardian.

(b) *Letters of guardianship expire one year and 120 days after the date of issuance unless renewed.*

(c) *The clerk shall renew letters of guardianship on the receipt and approval by the court of the guardian's annual accounting. If the guardian's annual accounting is disapproved,*

the clerk may not issue further letters of guardianship to that guardian relating to the ward or the ward's estate unless ordered by the court.

SECTION 11. Subsections (a) and (b), Section 222, Texas Probate Code, are amended to read as follows:

(a) Without Notice. (1) The court, on its own motion or on motion of any interested person, and without notice, may remove any personal representative, appointed under provisions of this Code, who:

(A) [(1)] Neglects to qualify in the manner and time required by law; [œ]

(B) [(2)] Fails to return within ninety days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge; [œ]

(C) [(3)] Having been required to give a new bond, fails to do so within the time prescribed; [œ]

(D) [(4)] Absents himself from the State for a period of three months at one time without permission of the court, or removes from the State; [œ]

(E) [(5)] Cannot be served with notices or other processes by reason of the fact that his whereabouts are unknown, or by reason of the fact that he is eluding service;

(F) *Has misapplied, embezzled, or removed from the State, or is about to misapply, embezzle, or remove from the State, all or any part of the property committed to the guardian's care; or*

(G) *Has cruelly treated a ward or has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.*

(2) *The court may remove a personal representative under Paragraph (F) or (G), Subdivision (1), of this subsection only on the presentation of clear and convincing evidence given under oath.*

(b) With Notice. The court may remove a personal representative on its own motion, or on the complaint of any interested person, after the personal representative has been cited by personal service to answer at a time and place fixed in the notice, when:

(1) Sufficient grounds appear to support belief that he has misapplied, embezzled, or removed from the state, or that he is about to misapply, embezzle, or remove from the state, all or any part of the property committed to his care;

(2) He fails to return any account which is required by law to be made;

(3) He fails to obey any proper order of the court having jurisdiction with respect to the performance of his duties;

(4) He is proved to have been guilty of gross misconduct, or mismanagement in the performance of his duties;

(5) He becomes an incompetent, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of his trust;

(6) As executor or administrator, he fails to make a final settlement within three years after the grant of letters, unless the time be extended by the court upon a showing of sufficient cause supported by oath;

(7) As executor or administrator, he fails to timely file the notice required by Section 128A of this code; [œ]

(8) As guardian of the person, he cruelly treats the ward, or neglects to educate or maintain the ward as liberally as the means of such ward and the condition of his estate permit; or

(9) *He fails to comply with the requirements of Section 126 of this code.*

SECTION 12. Part 3, Chapter VII, Texas Probate Code, is amended by adding Section 222A to read as follows:

Sec. 222A. **REINSTATEMENT AFTER REMOVAL.** (a) *Not later than the 10th day after the date the court signs the order of removal, a personal representative who is removed*

under Subsection (a)(1)(F) or (G), Section 222, of this code may file an application with the court for a hearing to determine whether the personal representative should be reinstated.

(b) On the filing of an application for a hearing under this section, the court clerk shall issue a notice stating that the application for reinstatement was filed, the name of the ward or decedent, and the name of the applicant. The clerk shall issue the notice to the applicant, the ward, a person interested in the welfare of the ward, the decedent's estate, or the ward's estate and, if applicable, to a person who has control of the care and custody of the ward. The notice must cite all persons interested in the estate or welfare of the ward to appear at the time and place stated in the notice if they wish to contest the application.

(c) If, at the conclusion of a hearing under this section, the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor representative, if any, and shall enter an order reinstating the applicant as personal representative of the ward or estate.

(d) If the court sets aside the appointment of a successor representative under this section, the court may require the successor representative to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate.

SECTION 13. Subsection (b), Section 241, Texas Probate Code, is amended to read as follows:

(b) Compensation of Guardians. The court may authorize compensation for a guardian serving as guardian of the person alone from available funds of the ward's estate. The court shall set the compensation in an amount not exceeding five percent (5%) of the ward's income. In determining whether to authorize guardian compensation, the court shall consider factors such as total monthly income of the ward and whether the ward is a Medicaid recipient [~~A guardian of the person alone is entitled to no compensation~~]. The guardian or the temporary guardian of the estate, or of the person and estate, shall not be entitled to, or receive, any fee or commission on the estate of the ward when it is first delivered to him; but shall be entitled to a fee of five percent [~~per cent~~] (5%) on the gross income of the ward's estate and five percent [~~per cent~~] (5%) on all money paid out on a finding by the court that the guardian has taken care of and managed the estate in compliance with the standards of this code. The term "money paid out" shall not be construed to include any money loaned or invested or paid over on the settlement of the guardianship. If the guardian manages a farm, ranch, factory, or other business of his ward, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services. The court may, on application of an interested person or on its own motion, deny a fee allowed by this subsection in whole or in part if:

(1) the court finds that the guardian has not taken care of and managed estate property prudently; or

(2) the guardian has been removed under Section 222 of this code.

SECTION 14. Subsection (c), Section 399, Texas Probate Code, is amended to read as follows:

(c) Guardians of the Person. (1) The guardian of the person, when there is a separate guardian of the estate, shall at the expiration of twelve (12) months from the date of his qualification and receipt of letters, and annually thereafter, return to the court his sworn account showing each item of receipts and disbursements for the support and maintenance of the ward, his education when necessary, and support and maintenance of the ward's dependents, when authorized by order of court.

(2) The guardian of the person, whether or not there is a separate guardian of the estate, shall submit to the court an annual report by sworn affidavit that contains the following information:

- a. the guardian's current name, address, and phone number;
- b. the ward's current:
 - (i) name, address, and phone number; and
 - (ii) age and date of birth;

c. the type of home in which the ward resides, described as the ward's own; a nursing, guardian's, foster, or boarding home; a relative's home, and the ward's relationship to the relative; a hospital or medical facility; or other type of residence;

d. the length of time the ward has resided in the present home and, if there has been a change in the ward's residence in the past year, the reason for the change;

e. the date the guardian most recently saw the ward, and how frequently the guardian has seen the ward in the past year;

f. a statement indicating whether or not the guardian has possession or control of the ward's estate;

g. the following statements concerning the ward's health during the past year:

(i) whether the ward's mental health has improved, deteriorated, or remained unchanged, and a description if there has been a change; and

(ii) whether the ward's physical health has improved, deteriorated, or remained unchanged, and a description if there has been a change;

h. a statement concerning whether or not the ward has regular medical care and the ward's treatment or evaluation by any of the following persons during the last year, including the name of that person and the treatment involved:

(i) a physician;

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

(iii) a dentist;

(iv) a social or other caseworker; or

(v) another individual who provided treatment;

i. a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities or, if no activities are available or if the ward is unable or has refused to participate in them, a statement to that effect;

j. the guardian's evaluation of the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;

k. the guardian's evaluation of whether the ward is content or unhappy with the ward's living arrangements;

l. the guardian's evaluation of unmet needs of the ward;

m. a statement of whether or not the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended; and

n. any additional information the guardian desires to share with the court regarding the ward [All who are guardians of the person shall include in their reports facts concerning each ward's physical welfare, his well-being, and his progress in education, if the latter be pertinent].

(3) If the ward is deceased, the guardian shall provide the court with the date and place of death, if known, in lieu of the information about the ward otherwise required to be provided in the annual report.

(4) Unless the judge is satisfied that the facts stated are true, he shall issue such orders as are necessary for the best interest of the ward.

SECTION 15. Sections 7 and 130, Texas Probate Code, are repealed.

SECTION 16. Part 5, Chapter V, Texas Probate Code, is repealed.

SECTION 17. Chapter IX, Texas Probate Code, is repealed.

SECTION 18. A court may modify any guardianship in effect on September 1, 1993, to conform with the requirements of the Texas Probate Code, as amended by this Act, on the court's own motion or on application by the ward, the guardian, or any other interested person or entity.

SECTION 19. (a) The following provisions of this Act do not take effect if this Act and H.B. No. 2685, Acts of the 73rd Legislature, Regular Session, 1993, are enacted and become law:¹

- (1) SECTIONS 6, 8, 9, 10, 13, 14, 22, 25, 26, and 27 of this Act; and
- (2) SECTION 7 of this Act, except for:
 - (A) added Section 111, Texas Probate Code;
 - (B) added Section 112A, Texas Probate Code; and
 - (C) added Section 123A, Texas Probate Code.

(b) The following provisions of H.B. No. 2685, Acts of the 73rd Legislature, Regular Session, 1993, do not take effect if H.B. No. 2685 and this Act are enacted and become law:

- (1) added Section 633, Texas Probate Code;
- (2) added Section 672, Texas Probate Code; and
- (3) added Section 687, Texas Probate Code.

SECTION 20. This Act takes effect September 1, 1993.

SECTION 21. Except as provided by Section 18 of this Act, the change in law made by this Act applies only to proceedings for the appointment of a guardian instituted on or after the effective date of this Act. Proceedings for the appointment of a guardian instituted before the effective date of this Act are governed by the law in effect when the proceedings were instituted, and the former law is continued in effect for that purpose.

SECTION 22. Notwithstanding Subsection (b), Section 185, Texas Probate Code, as added by this Act, a letter of guardianship issued before the effective date of this Act expires, unless renewed as provided by Subsection (c), Section 185, Texas Probate Code, as added by this Act, on the date of the required annual accounting immediately following the effective date of this Act.

SECTION 23. (a) Not later than October 1, 1993, the commissioner of health and human services shall appoint an advisory committee on development of a uniform assessment tool composed of:

- (1) one representative each from the Texas Department of Health, Texas Department of Human Services, and Texas Department of Mental Health and Mental Retardation;
- (2) one licensed psychologist who specializes in the treatment of persons with mental retardation;
- (3) two members of a private association of persons who advocate on the behalf of or in the interest of persons with mental retardation or persons with a developmental disability;
- (4) one parent of a person with mental retardation or a developmental disability;
- (5) two professionals who work with persons who have a developmental disability; and
- (6) two persons who advocate on behalf of or in the interest of elderly persons.

(b) The committee shall designate one member to serve as presiding officer.

(c) The committee shall develop a uniform assessment tool to be used by the staff of a facility regulated or operated by the Texas Department of Health, Texas Department of Human Services, or Texas Department of Mental Health and Mental Retardation to assess the capacity of an elderly person, a person with mental retardation, or a person with a developmental disability to make decisions concerning the person's own welfare and financial affairs, including the person's:

- (1) need for a guardianship and the type of guardianship that is appropriate for the person;
- (2) ability to care for the person's own physical health or to manage the person's own financial affairs;
- (3) ability to provide food, clothing, or shelter for himself or herself;
- (4) decision-making ability; and
- (5) ability to communicate a decision.

¹ H.B. No. 2685 (ch. 957) is effective Sept. 1, 1993.

(d) Each agency represented on the committee shall provide the committee with staff support.

(e) Members of the committee receive no compensation but are entitled to reimbursement for reasonable expenses incurred in performing official duties in accordance with the General Appropriations Act.

(f) The committee shall make its recommendations to the commissioner of health and human services, Texas Department of Human Services, Texas Department of Health, and Texas Department of Mental Health and Mental Retardation not later than June 1, 1994.

SECTION 24. (a) The Texas Department of Health, Texas Department of Human Services, and Texas Department of Mental Health and Mental Retardation shall adopt the memorandum of understanding prescribed by Section 533.044, Health and Safety Code, as added by this Act, not later than September 1, 1994.

(b) In adopting the memorandum of understanding, the Texas Department of Health, Texas Department of Human Services, and Texas Department of Mental Health and Mental Retardation shall consider the recommendations of the committee appointed under Section 23 of this Act.

SECTION 25. A private professional guardian who is serving as guardian of a ward on the effective date of this Act shall apply for certification under Section 126, Texas Probate Code, as added by this Act, not later than October 1, 1993.

SECTION 26. The change in law made by Section 13 of this Act applies only to compensation for guardians appointed on or after the effective date of this Act. Compensation for a guardian appointed before the effective date of this Act is covered by the law in effect when the guardian was appointed, and the former law is continued in effect for that purpose.

SECTION 27. The change in law made by Section 14 of this Act applies only to reports submitted to the court on or after January 1, 1994. A report submitted before the effective date of this Act is covered by the law in effect at the time the report is submitted, and the former law is continued in effect for that purpose.

SECTION 28. The change in law made by Section 17 of this Act applies only to the appointment of a guardian based on information that is filed under Section 415, Texas Probate Code, on or after the effective date of this Act. An appointment of a guardian based on information that is filed before the effective date of this Act is governed by the law in effect on the date the information was filed, and the former law is continued in effect for that purpose.

SECTION 29. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 28, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 25, 1993, by a viva-voce vote; passed the House, with amendments, on May 21, 1993, by a non-record vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.