

Legislative Update  
81st Legislature, Regular Session (2009)

This report briefly summarizes new legislation concerning Texas guardians and their role in the judicial system. Senate Bills 1053, 1055, 1056 and 1057 in particular relate to certified guardians.

All bills contained in this report may not directly relate to guardianship. Rather, it focuses on legislation, tracked by the Office of Court Administration, affecting the probate courts, judges, county clerks, the Guardianship Certification Board, and other judicial system actors.

The report was excerpted, for the most part, from the Office of Court Administration's legislative update summarizing new legislative directly affecting the Texas judiciary. You may read the complete report on OCA's [website](#). The full text of all bills referenced is available from the Texas Legislature Online's website, [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

**HB 585** – Effective 6/19/09.

Strikes references to the court's "minutes" in the Probate Code and replaces them with "judge's probate docket" or "judge's guardianship docket." Deletes requirement that the judge sign probate minutes and guardianship minutes on a monthly basis. *See* various sections of the Probate Code.

**HB 587** – Effective 9/1/09.

Clarifies that a court in a guardianship proceeding may authorize payment of attorney's fees from the county treasury only if the court is satisfied that the attorney to whom the fees will be paid has not received and is not otherwise seeking payment for representing the person who filed an application to be appointed guardian of a proposed ward or for the appointment of another person as guardian. Clarifies that the court in a guardianship proceeding may authorize the payment of reasonable and necessary attorney's fees as determined by the court. *See* § 665B, Probate Code.

**HB 704** - Effective 5/23/09

Gives a young adult the permissive ability to request a court that had continuing, exclusive jurisdiction over the young adult on the day before that person's 18<sup>th</sup> birthday to render an order extending jurisdiction over the young adult. A "young adult" would be an individual between 18 and 21 years of age who was in the conservatorship of the Department of Family and Protective Services (DFPS) on the day of the individual's 18<sup>th</sup> birthday, and after the individual's 18<sup>th</sup> birthday, resided in foster care or received transitional living services from DFPS. *See* Subchapter G, Chapter 263, Fam. Code.

**HB 888** – Effective 6/19/09.

Relates to the 48-hour detention of a person for a mental health examination. Extends the time a person may be detained if the 48-hour period ends on a Saturday, Sunday, or legal holiday or before 4 p.m. on the first succeeding business day to 4 p.m. (rather than 12 p.m.) on the first succeeding business day. *See* § 573.021, Health and Safety Code.

**HB 1460** – Effective 9/1/09

Requires that an application for probate of a written will state, if applicable, whether a marriage of the decedent was ever dissolved after the will was made, whether by divorce, annulment, or a declaration that the marriage was void. *See* § 81A, Texas Probate Code.

**HB 1461** – Effective 9/1/09

Requires that the application for probate of a will as a muniment of title state, if applicable, whether a marriage of the decedent was ever dissolved after the will was made, whether by divorce, annulment, or a declaration that the marriage was void. *See* § 89A, Texas Probate Code.

**HB 1969** – Effective 6/19/09

Provides that penalty clauses in wills and trusts for bringing a cause of action are ineffective in cases where a challenge to a will or trust is brought in good faith and with just cause. *See* § 64, Probate Code and §§ 111.035 and 112.038, Property Code.

**HB 2027** – Effective 9/1/09

Replaces the current Texas Anatomical Gift Act with the Revised Uniform Anatomical Gift Act, relating to the donation and use of parts or all of the human body after death. *See* Chapter 692A and §§ 241.153, 691.030, 693.002, 693.003, 693.005, 693.006, Health and Safety Code, § 512.401, Transportation Code, and § 651.407, Occupations Code.

**HB 2368** – Effective 9/1/09.

In addition to amending provisions related to trusts, amends provision regarding the appointment and compensation of guardian and attorneys ad litem. *See* §1104.021, Insurance Code and §§112.010, 19113.029, 115.013, 115.014, 116.006 and 116.172 Property Code.

**HB 2502** – Effective 1/1/14.

Contains non-substantive revision of portions of the Probate Code applicable to decedents' estates. The proposed new code is the Estates and Guardianship Code. Also transfers and re-designates, but does not revise, portions of the Probate Code relating to independent administration and jurisdiction, venue of probate courts, the Durable Power of Attorney Act, and guardianship. *See* various sections of the Probate Code.

**HB 3080** – Effective 9/1/09.

Clarifies that the court in a guardianship proceeding is authorized, but not required, to set the guardian's compensation in an amount not exceeding five percent of the ward's gross income. Authorizes the court to modify the amount of compensation if it is unreasonably low, authorize payment of compensation on a quarterly basis, and reduce or eliminate the compensation under certain circumstances. Addresses compensation of an attorney who provides both guardianship services and legal services. Provides a mechanism for self-proving declarations of appointment of a guardian. Makes several changes in management trust provisions, including eligibility of persons and entities other than financial institutions to serve as trustee and provision for transfer of management trust property to a pooled trust. *See* various sections of the Probate Code.

**HB 3352** – Effective 9/1/09.

Requires clerks to report to the Department of Public Safety (DPS) information necessary to prohibit the purchase of firearms by: persons ordered by a court to receive inpatient mental health services, persons acquitted by reason of insanity, persons determined to have mental retardation and committed to long-term residential care, persons for whom a court has appointed a guardian because the person lacks mental capacity, and persons who have been found to be

incompetent to stand trial. Requires DPS to establish a procedure to provide the information to the FBI for use with the National Instant Criminal Background Check System and also to establish a system to correct DPS records. *See* §§ 411.052, 411.0521, Gov't Code; § 574.088, Health & Safety Code.

**HB 4451** – Effective 9/1/09.

Authorizes a child discharged from Texas Youth Commission (TYC) due to mental retardation or mental illness to qualify for and receive continuity of care services through the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). Authorizes a child who is receiving services through TCOOMMI as a TYC parolee to continue with treatment until the child reaches the parole completion date. *See* §§ 61.077, 61.0773, Hum. Res. Code; § 614.019, Health & Safety Code.

**SB 271** – Effective 6/19/09 (but implementation may be delayed until federal waiver, if necessary, is obtained).

Authorizes court to appoint Department of Aging and Disability Services (DADS) as successor guardian for certain wards. Limits the number of such appointments to 55 per year, requires that the appointments be distributed equally throughout the state or as nearly equally as possible, and requires that the ward be located more than 100 miles from the court that created the guardianship. Also requires DADS to coordinate with area agencies on aging and other local entities on issues regarding informal caregivers. *See* §§ 161.076, 161.101, Hum. Res. Code; § 695 Probate Code.

**SB 408** – Effective 9/1/09 – except that changes made by Section 13 (putting the amendments made by Section 12 into a future re-codification) will not be effective until 1/1/14.

Updates provisions of the Probate Code relating to jurisdiction of probate proceedings and proceedings regarding powers of attorney and certain trusts. Redefines the term “probate proceedings” and synonymous terms. Makes conforming changes in the Government Code and Property Code. Also sets forth the manner in which the Probate Code provisions that are updated by the bill are to be recodified as provisions of the future Estates and Guardianships Code (*see* HB 2502).

**SB 666** – Effective 9/1/09.

Requires the trustee of a charitable trust to obtain approval of the district court or statutory probate court in which the trust was created prior to changing the location in which the trust is administered to an out-of-state location. Authorizes the attorney general to bring an action to enforce the provision and authorizes the court to remove a trustee that fails to comply with the requirement. *See* §113.029, Prop. Code.

**SB 683** – Effective 9/1/09

Amends procedures for assigning a judge to a case in which a statutory probate court judge has been recused or disqualified. Also amends several Government Code provisions related to the powers of 20 statutory probate court associate judges and requires the use of court reporter when a probate associate judge presides over a jury trial. *See* §§ 25.0022, 25.002201, 25.00255 and Subchapter G, Chapter 54, Gov't Code.

**SB 917** – Effective 5/23/09.

Adds the Property Code definition of “charitable trust” to the Probate Code to clarify the concurrent jurisdiction of district courts and statutory probate courts in actions involving a charitable trust. *See* §5, Probate Code.

**SB 1053** – Effective 9/1/09.

Provides that a person may not be appointed to serve as guardian if he or she does not have the required certification by the Guardianship Certification Board (GCB). Authorizes a court to remove, on the complaint of the GCB, a person who would be ineligible for appointment as a guardian because of the person's failure to maintain the required certification. *See* §§ 681, 761, Probate Code.

**SB 1055** – Effective 9/1/09.

Eliminates duplicative reporting requirements and imposes consistent and streamlined requirements for reports by private professional guardians, local guardianship programs and the Department of Aging and Disability Services to county clerks and the Guardianship Certification Board. *See* § 111.044, Gov't Code; §§ 697, 697A, Probate Code.

**SB 1056** – Effective 6/19/09.

Authorizes the Department of Public Safety (DPS) to disclose to the Guardianship Certification Board and county clerks in guardianship proceedings criminal history record information that is the subject of a nondisclosure order. Also requires a court that convicts a child of a misdemeanor punishable by fine only that does not constitute conduct indicating a need for supervision to issue a nondisclosure order regarding criminal history record information related to the offense, lists agencies that may receive the information, and exempts the information from disclosure under the Public Information Act. *See* §§ 411.081, 411.0851, 552.142, 552.1425, Gov't Code.

**SB 1057** – Effective 6/19/09.

Eliminates requirement that the county clerk must obtain criminal history record information on persons serving as guardians, proposed guardians, and local guardianship program employees and volunteers who provide guardianship services to the program's wards if the person holds a certificate issued by the Guardianship Certification Board (GCB) and the GCB conducted a criminal history check on the person. Authorizes the GCB to give the clerk the criminal history record information it obtained from the Department of Public Safety (DPS) and FBI. *See* §§ 411.1386, 411.1406 Gov't Code; § 698, Probate Code.

**SB 2344** – Effective 9/1/09.

Revises examination and report requirements for a court to grant an application to create a guardianship for an incapacitated person other than a person whose alleged incapacity is mental retardation in guardianship proceedings. Also revises requirements for an application in which the proposed ward's alleged capacity is mental retardation. *See* § 687, Probate Code.

**SB 2435** - Effective 9/1/09

Establishes guardianship compensation, expense limits and administrative costs for wards under medical assistance with applied income. Also requires the Health and Human Services Commission to adopt rules for medical assistance reimbursement claims for compensation and expenses ordered in those guardianship proceedings. *See* § 670, Probate Code, § 32.02451 Hum. Res. Code.

**HB 704** – Effective 5/23/09.

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