

BILL ANALYSIS

Senate Research Center

S.B. 1882
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to ensure that persons under guardianship understand their rights. Persons under guardianship often retain many legal and civil rights, depending on the court order. Unfortunately, often times they are not informed of the rights they get to keep and presume they have no rights whatsoever. Incidentally, some guardians are under the same assumption. There are few legal processes more restrictive of citizens in a free society than guardianship. It is important that the persons under guardianship know the rights that they get to keep, unless the court has determined otherwise.

S.B. 1882 clarifies in the Estates Code the 25 rights that already are granted for persons under guardianship. The rights include: to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting; to visit with people of their choice; to appear before the court to express their preferences or concerns; to contact the Department of Family and Protective Services if they feel abused or neglected; and the right to vote. What's more, the bill would require guardians to explain these rights to the person under guardianship.

As proposed, S.B. 1882 amends current law relating to a bill of rights for wards under guardianship.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1151, Estates Code, by adding Subchapter H, as follows:

SUBCHAPTER H. RIGHTS OF WARDS

Sec. 1151.351. BILL OF RIGHTS FOR WARDS. (a) Provides that a ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

(b) Provides that a ward has the right:

- (1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;
- (2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;
- (3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

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

(5) to consideration of current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions in guiding substituted judgment decisions made by the guardian to promote the ward's self-determination and well-being;

(6) to financial self-determination for all public benefits and access to a monthly personal allowance;

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

(8) not to be involuntarily admitted for care or treatment to a public or private inpatient facility, a public or private psychiatric facility, a residential care facility operated by the Health and Human Services Commission, or a nursing facility;

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

(10) to control the ward's environment based on the ward's personal preferences;

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

(12) to appear before the court and express the ward's preferences and concerns when the court considers the renewal of letters of guardianship or is making a determination concerning whether the guardianship should be continued, modified, or terminated;

(13) to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received from the ward or any person about the guardianship;

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

(15) to self-determination in the maintenance, disposition, and management of real and personal property, including the right to receive notice and object about the maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(16) to personal privacy and confidentiality in personal matters, subject to state and federal law;

(17) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the court determines that certain communication or visitation causes substantial harm to the ward, the court may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm;

(18) to petition the court and retain counsel of the ward's choice for capacity restoration, modification of the guardianship, the appointment of a different guardian or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement;

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

(20) to personal visits from the guardian at least once a month, but more often, if necessary;

(21) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet privately with representatives of that organization;

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

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

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

(25) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.

(c) Authorizes a ward under guardianship to seek injunctive or declaratory relief to enforce the ward's rights under this section in the court having jurisdiction over the ward's guardianship.

(d) Authorizes a court to award attorney's fees to an attorney appointed or retained to represent a ward in a proceeding to enforce the ward's rights under this section.

(e) Provides that, in enacting or revising statutes or resolutions, the legislature and the Texas Legislative Council are directed to replace, as appropriate, the term "ward" with the preferred phrase or appropriate variations of the phrase "person under guardianship."

(f) Provides that this section does not supersede or abrogate other remedies existing in law.

SECTION 2. Effective date: upon passage or September 1, 2015.