

1-1 By: Zaffirini S.B. No. 1606  
1-2 (In the Senate - Filed March 6, 2023; March 16, 2023, read  
1-3 first time and referred to Committee on Jurisprudence; April 6, 2023,  
1-4 rereferred to Committee on State Affairs; April 19, 2023, reported  
1-5 adversely, with favorable Committee Substitute by the following vote:  
1-6 Yeas 10, Nays 0; April 19, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1606 By: Hughes

1-21 A BILL TO BE ENTITLED  
1-22 AN ACT

1-23 relating to evidence and orders regarding intellectual disability  
1-24 or mental condition in certain guardianship proceedings.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 1101.104, Estates Code, is amended to  
1-27 read as follows:

1-28 Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING  
1-29 INTELLECTUAL DISABILITY. (a) If an intellectual disability is the  
1-30 basis of the proposed ward's alleged incapacity, the court may not  
1-31 grant an application to create a guardianship for the proposed ward  
1-32 unless the applicant presents to the court a written letter or  
1-33 certificate that:

1-34 (1) complies with Sections 1101.103(a) and (b); or  
1-35 (2) shows that not earlier than 24 months before the  
1-36 hearing date:

1-37 (A) the proposed ward has been examined by a  
1-38 physician or psychologist licensed in this state or certified by  
1-39 the Health and Human [Department of Aging and Disability] Services  
1-40 Commission to perform the examination, in accordance with rules of  
1-41 the executive commissioner of the commission [Health and Human  
1-42 Services Commission] governing examinations of that kind, and the  
1-43 physician's or psychologist's written findings and recommendations  
1-44 include a determination of an intellectual disability; or

1-45 (B) a physician or psychologist licensed in this  
1-46 state or certified by the Health and Human [Department of Aging and  
1-47 Disability] Services Commission to perform examinations described  
1-48 by Paragraph (A) updated or endorsed in writing a prior  
1-49 determination of an intellectual disability for the proposed ward  
1-50 made by a physician or psychologist licensed in this state or  
1-51 certified by the commission [department].

1-52 (b) A physician or psychologist described by Subsection  
1-53 (a)(2)(A) must:

1-54 (1) have experience examining individuals with an  
1-55 intellectual disability; or

1-56 (2) have an established patient-provider relationship  
1-57 with the proposed ward.

1-58 SECTION 2. Section 1202.152(a), Estates Code, is amended to  
1-59 read as follows:

1-60 (a) Except as provided by Section 1202.1521, the [The] court

2-1 may not grant an order completely restoring a ward's capacity or  
2-2 modifying a ward's guardianship under an application filed under  
2-3 Section 1202.051 unless the applicant presents to the court a  
2-4 written letter or certificate from a physician licensed in this  
2-5 state that is dated:

- 2-6 (1) not earlier than the 120th day before the date the
- 2-7 application was filed; or
- 2-8 (2) after the date the application was filed but
- 2-9 before the date of the hearing.

2-10 SECTION 3. Subchapter D, Chapter 1202, Estates Code, is  
2-11 amended by adding Section 1202.1521 to read as follows:

2-12 Sec. 1202.1521. PHYSICIAN'S LETTER OR CERTIFICATE:  
2-13 REQUIREMENTS IF ALLEGED INCAPACITY BASED ON INTELLECTUAL  
2-14 DISABILITY. (a) If an intellectual disability is the basis of a  
2-15 ward's alleged incapacity, instead of the letter or certificate  
2-16 required under Section 1202.152(a), the court shall, subject to  
2-17 Subsection (c), consider a written letter or certificate the  
2-18 applicant presents from:

- 2-19 (1) a physician licensed in this state; or
- 2-20 (2) a psychologist licensed in this state or certified
- 2-21 by the Health and Human Services Commission to perform the
- 2-22 examination, in accordance with rules adopted by the executive
- 2-23 commissioner of the commission governing examinations of that kind.

2-24 (b) The letter or certificate must:  
2-25 (1) state, in the physician's or psychologist's  
2-26 opinion, whether the ward has the capacity, or sufficient capacity  
2-27 with supports and services, to do any of the activities listed in  
2-28 Section 1202.152(b)(1);

2-29 (2) state how or in what manner the ward's ability to  
2-30 make or communicate reasonable decisions concerning himself or  
2-31 herself is affected by the ward's mental capacity;

2-32 (3) include any other information required by the  
2-33 court; and  
2-34 (4) be dated within the period prescribed by Section  
2-35 1202.152(a)(1) or (2).

2-36 (c) The physician or psychologist who provides a letter or  
2-37 certificate under this section must have:

- 2-38 (1) experience examining individuals with an
- 2-39 intellectual disability; or
- 2-40 (2) an established patient-provider relationship with
- 2-41 the ward.

2-42 SECTION 4. Section 1202.155, Estates Code, is amended to  
2-43 read as follows:

2-44 Sec. 1202.155. ADDITIONAL REQUIREMENTS FOR ORDER RESTORING  
2-45 WARD'S CAPACITY. If the court finds that a ward is no longer an  
2-46 incapacitated person, the order completely restoring the ward's  
2-47 capacity must contain findings of fact and specify, in addition to  
2-48 the information required by Section 1202.154:

- 2-49 (1) that the ward is no longer an incapacitated
- 2-50 person;
- 2-51 (2) that there is no further need for a guardianship of
- 2-52 the person or estate of the ward;

2-53 (3) ~~if the ward's incapacity resulted from a mental~~  
2-54 ~~condition, that the ward's mental capacity is completely restored;~~  
2-55 ~~[(4)] that the guardian is required to:~~

- 2-56 (A) immediately settle the guardianship in
- 2-57 accordance with this title; and
- 2-58 (B) deliver all of the remaining guardianship
- 2-59 estate to the ward; and

2-60 (4) ~~[(5)]~~ that the clerk shall revoke letters of  
2-61 guardianship when the guardianship is finally settled and closed.

2-62 SECTION 5. The changes in law made by this Act apply only to  
2-63 an application for the appointment of a guardian, for the complete  
2-64 restoration of a ward's capacity, or for the modification of a  
2-65 guardianship, as applicable, that is filed on or after the  
2-66 effective date of this Act. An application filed before the  
2-67 effective date of this Act is governed by the law in effect on the  
2-68 date the application was filed, and the former law is continued in  
2-69 effect for that purpose.

3-1 SECTION 6. This Act takes effect September 1, 2023.

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