

HB 1641 -- GUARDIANSHIPS AND CONSERVATORSHIPS

SPONSOR: Terry

The bill creates guardianship classifications and provides definitions for the various classifications. The bill also amends the definitions for "habilitation", "least restrictive alternative", and "treatment". The bill establishes a hierarchy of persons a judge must appoint to serve as a guardian or conservator, whereas, currently, a judge must only consider the hierarchy when determining whom to appoint. The bill establishes protocols for when complaints are made against a guardian with whom an incapacitated person is to reside or currently resides. The bill prohibits a guardianship from being denied due to various factors specified in the bill, including the prospective guardian residing in low-income housing or the prospective guardian's employment wages.

Currently, guardians and conservators, except those excluded in statute, in certain circumstances are required to submit at their own expense to a background screening. This bill limits those excluded to only public administrators, and it adds a requirement that the public administrator comply with the provision by maintaining a copy of his or her criminal history record check and disqualification list and credit check records with the County Commission for the court's inspection as the court deems necessary. Credit check records will not be public records. The bill allows the court, on its own motion or upon receiving a complaint, to order a guardian, guardian ad litem, or conservator to submit to a background check, and the bill specifies certain requirements the court must fulfill when doing so.

Currently, guardians and limited guardians are required to file an annual report, concerning the status of the adult ward and the guardian's or limited guardian's future plans for the ward, with the court. The bill adds the requirement that a guardian, limited guardian, guardian ad litem, or limited guardian ad litem, taking into account the ward's physical, mental, and cognitive condition, attach to the annual report a statement or affidavit from the ward, signed by the ward, that provides an annual review of the guardian's, limited guardian's, guardian's ad litem, or limited guardian's ad litem performance, whether the ward requests the court to change or terminate the guardianship, whether the ward feels safe in his or her various environments, how the ward is being treated, and any specific concerns the ward would like the court to know and consider. The court must take the statement or affidavit into consideration when reviewing the annual report and determining whether to continue, reduce, or terminate the guardianship. The court must seal any information that reveals

details about a ward's health. Any person who would like access to such information must file a petition with the probate court and provide clear and convincing evidence for why the information should be revealed to the person filing the petition. The court must not act upon a notice or complaint filed requesting the court to order a mental status evaluation of a ward without the notice or complaint being signed and notarized under oath by the filing person, official, or entity and until the court receives the signed and notarized notice or complaint.

The bill amends provisions related to a guardian's duties. Under the bill, the general powers of a guardian of an incapacitated person will be to take charge of the ward and provide for the ward's care, treatment, habilitation, education, support, and maintenance. However, the guardian will not be financially responsible for such treatment and care. The bill establishes safeguards to ensure the ward has equal access to the courts when he or she has only a guardian and no conservator. The bill also establishes safeguards to ensure a guardian has equal access to the courts.

Finally, current law specifies that the appointment of a guardian is not itself a determination that a ward lacks testamentary capacity, but the bill provides the ability to review the ward's testamentary capacity if it is disputed.

This bill is similar to HB 68 (2023) and HB 2488 (2022).