

BILL ANALYSIS

S.B. 1129
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2017, the legislature enacted Senate Bill 39, which, among other things, allowed courts with guardianship jurisdiction to transfer a case to a court in another county if the ward is moved to that county. This allowed a court that is closer to the ward with a guardian to monitor his or her care. Current law, however, does not explicitly require the recipient court to accept the transfer. In addition to this, it has been asserted that mediation is underutilized in guardianship proceedings, despite its potential to resolve family disputes, minimize costs and conflict, and help the court identify feasible guardianship alternatives and supports and services. S.B. 1129 seeks to address these issues by requiring a court to accept a transfer of a guardianship of a ward who resides in the county to which the guardianship is being transferred and for whom the transfer would be in the best interest and by establishing a guardianship mediation training course in order to allow for more mediation services.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Office of Court Administration of the Texas Judicial System in SECTION 5 of this bill.

ANALYSIS

S.B. 1129 amends the Estates Code to revise provisions under which a court determines whether to transfer guardianship of a ward from one county to another as follows:

- includes among the court's required findings to warrant transfer that the ward has resided in the county to which the guardianship is to be transferred for at least six months as an alternative to a lack of a showing of good cause to deny the transfer; and
- includes among the orders the court must enter if, coupled with such a finding, the transfer is determined to be in the ward's best interest an order certifying that the guardianship is in compliance with the Estates Code at the time of transfer.

The bill authorizes the court, in making a determination that the transfer is in the ward's best interests, to consider the interests of justice, the convenience of the parties, and, if the ward is 12 years of age or older, the ward's preference. The bill requires a county, on receipt of a transfer order, to accept the transfer of the guardianship.

S.B. 1129 establishes the following when a guardianship is transferred from one county to another:

- the court to which a guardianship is transferred becomes the court of continuing, exclusive jurisdiction;

- a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;
- a judgment or order entered in the guardianship before the transfer has the same effect and must be enforced as a judgment or order entered by the court to which the guardianship is transferred; and
- the court ordering the transfer does not retain:
 - jurisdiction of the ward who is the subject of the guardianship; and
 - the authority to enforce an order entered for a violation of provisions relating to guardianship and related procedures that occurred before or after the transfer.

S.B. 1129 exempts a judge of the court from which a guardianship is transferred from civil liability for any injury, damage, or loss to the ward or the ward's estate that occurs after the transfer and exempts a judge of the court to which a guardianship is transferred from civil liability for any such loss that occurred before the transfer.

S.B. 1129 establishes the following, if a court refers a contested guardianship proceeding regarding the appointment of a guardian for a proposed ward to mediation:

- a determination of incapacity of the proposed ward may be an issue to be mediated, but the applicant for guardianship must still prove to the court that the proposed ward is an incapacitated person in accordance with the requirements of the general procedure to appoint a guardian; and
- all parties to the proceeding are required to evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and alternatives to guardianship would be feasible to avoid the need for appointment of a guardian.

The bill provides for the payment of mediation costs and referral to a local alternative dispute resolution center and waiver of the mediation cost, under certain conditions.

S.B. 1129 amends the Government Code to require the Office of Court Administration of the Texas Judicial System (OCA) by rule to establish a training course with at least 24 hours of training for persons facilitating mediations relating to guardianship that may be provided by a mediation training provider approved by OCA. The bill requires a mediation training provider to adhere to the established curriculum in providing the training course. These provisions expressly do not require a mediator facilitating a mediation to attend or be certified under such a training course.

S.B. 1129 applies to a guardianship created before, on, or after the bill's effective date. Implementation of a provision of this bill by OCA is mandatory only if a specific appropriation is made for that purpose.

EFFECTIVE DATE

September 1, 2021.