

BILL ANALYSIS

Senate Research Center

H.B. 3135
By: Naishtat (Moncrief)
Jurisprudence
5-8-97
Engrossed

DIGEST

During the 73rd Legislative Session, the Texas Probate Code underwent major revisions. Section 770 of that code was amended to prohibit a guardian from voluntarily admitting an incapacitated person to a residential care facility operated by the Texas Department of Mental Health and Mental Retardation (MHMR), except for emergency care or respite services. Provisions in the Persons with Mental Retardation Act governing access to mental retardation services, however, were not concurrently changed. This resulted in conflicting statutes, confusion, and misinterpretation of a guardian's authority. Additionally, there is concern about Section 691 of the Probate Code, which contains provisions for MHMR, Community Mental Health and Mental Retardation Centers, the Department of Protective and Regulatory Services, and any other agency that is directly providing services, to be appointed guardian only as last resort. Concern has been raised that the appointment of a health service provider as legal guardian creates an inherent conflict of interest, as this person may consent for whatever services he or she feels are necessary for a ward. H.B. 3135 makes the provisions regarding ward commitment in the Persons with Mental Retardation Act consistent with Section 770, Texas Probate Code. In addition, this bill repeals Section 691, Texas Probate Code, regarding an agency as the legal guardian of last resort.

PURPOSE

As proposed, H.B. 3135 provides for the application for mental retardation services by a guardian and eligibility for guardianship.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 593.021, Health and Safety Code, to authorize the proposed client or the parent if the proposed client is a minor to apply for voluntary mental retardation services under Sections 593.022, 593.026, 593.027, 593.0275, or 593.028. Deletes existing text authorizing the guardian of the person to apply for such services; and authorizing certain persons to apply under Section 593.024. Authorizes the guardian of the proposed client to apply for services under this subchapter under Sections 593.022, 593.027, 593.0275, and 593.028.

SECTION 2. Repealer: Section 691, Texas Probate Code (Agency as Last Resort).

SECTION 3. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 4. Emergency clause.