

SUBJECT: Creating a regional associate judge program to assist in guardianship cases

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton,
Moody, Schofield, Smith

0 nays

WITNESSES: For — Terry Hammond, Texas Guardianship Association; Guy Herman,
Travis County Probate Court; (*Registered, but did not testify*: Craig
Hopper)

Against — (*Registered, but did not testify*: Jeff Miller, Disability Rights
Texas)

On — Drue Farmer

DIGEST: CSHB 79 would create a program for presiding judges of administrative
judicial regions to appoint associate judges to assist county courts and
statutory county courts other than statutory probate courts in those regions
with guardianship proceedings or proceedings for protective services for
elderly persons and persons with disabilities.

Appointment. The presiding judge of each administrative judicial region
would be required to confer with the judges of the region's county courts
and statutory courts with jurisdiction over guardianship or protective
services proceedings and determine whether there was a need for the
appointment of a full-time or part-time associate judge to assist the courts
in conducting those proceedings.

If an associate judge was needed, the presiding judge would have to
appoint a judge from a list of applicants kept by the Office of Court
Administration (OCA) who met certain qualifications specified in the bill.
Before the appointment was made, this list would be provided to each
judge of a court from which proceedings would be referred. Each of those

judges and the presiding judge of the statutory probate courts could recommend any of the listed applicants for appointment.

An appointed associate judge would serve the courts in the administrative judicial region that were specified by the presiding judge. Two or more presiding judges of administrative judicial regions jointly could appoint associate judges to serve specified courts in the presiding judges' regions.

An associate judge appointed under the bill to serve in one administrative judicial region would be required to reside in that region or in an adjacent county during the term of appointment. An associate judge appointed to serve in two or more administrative judicial regions could reside anywhere in the regions.

Additional rules. Associate judges appointed under CSHB 79 would be subject to the rules pertaining to statutory probate court associate judges, except to the extent that the provisions of this bill conflicted with those rules. They would have the judicial immunity of district judges, and all existing immunity granted to an associate judge would continue in full force.

Associate judges could not engage in the private practice of law.

Referred proceedings. Under CSHB 79, guardianship or protective services proceedings would have to be referred to an associate judge appointed under the bill by a general order issued by the judge of each court that the associate judge was appointed to serve. A general order could be amended or withdrawn at any time by the judge that issued the order. A judge of a court the associate judge was appointed to serve also could refer a specific guardianship or protective services proceeding to the associate judge instead of issuing a general order.

An associate judge could render and sign any pretrial order and recommend to the referring court any order after a trial on the merits. The proposed order or judgment of an associate judge would become the order or judgment of the referring court unless the right to a de novo hearing

before the referring court was not waived and a request for such a hearing was timely filed.

An associate judge also would be allowed to refer a complex guardianship proceeding back to the referring court for final disposition after recommending temporary orders for the protections of a ward.

Term. The term of an associate justice would be four years. However, the presiding judge of the administrative judicial region or any successor presiding judge could terminate the associate judge's appointment at any time.

Salary. An associate judge would be entitled to a salary that was 90 percent of the salary paid to a district judge as set by the general appropriations act. The associate judge's salary would be paid from money available from the state and federal governments, county money available for payment of officers' salaries, subject to approval of the commissioners courts in the counties in which the associate judge served, or a combination of the two.

Host county. If an associate judge was appointed to serve in one administrative judicial region, the presiding judge of that region would determine the host county of the associate judge. If an associate judge was appointed to serve in more than one administrative judicial region, the presiding judges by majority vote would determine the associate judge's host county. The designation of a host county would be subject to the approval of the commissioners court of that county.

The host county would be required to provide an adequate courtroom and quarters for the associate judge and personnel assisting the judge. An associate judge would not have to reside in the host county unless otherwise required.

Personnel. The appointing presiding judge or judges of the administrative judicial region or regions could appoint necessary personnel to assist the associate judge. The salaries of the personnel would be paid from money

available from the state and federal governments and/or county money available for payment of officers' salaries, subject to the approval of the commissioners courts of the counties in which the associate judge served.

Reappointment. Before reappointing an associate judge, a presiding judge of an administrative judicial region would have to notify each judge of a court from which proceedings would be referred to the associate judge of the presiding judge's intent to reappoint the associate judge. Each of those judges and the presiding judge of the statutory probate courts could submit a recommendation on whether the associate judge should be reappointed.

Visiting associate judges. CSHB 79 would not limit the authority of presiding judges of administrative judicial regions to assign judges eligible for assignment to assist in processing guardianship proceedings or protective services proceedings in a reasonable time.

If an associate judge appointed under the bill was temporarily unable to perform the judge's official duties or if a vacancy occurred in the position, the presiding judge or judges could appoint a visiting associate judge to perform the duties of the associate judge temporarily. A person would not be eligible for appointment as a visiting associate judge unless the person had served for at least two years as an associate judge appointed pursuant to this bill, a district judge, a statutory county court judge, or a statutory probate judge.

A visiting associate judge would be subject to the same requirements as an associate judge, would be entitled to compensation in an amount to be determined by the presiding judges, and would not be considered a state employee for any purpose. The prohibition against a state agency entering into employment contracts with former or retired employees of the agency would not apply to the appointment of a visiting associate judge.

Supervision, training, and evaluation. OCA would be required to assist the presiding judges of the administrative judicial regions in:

- monitoring associate judges' compliance with job performance standards, uniform practices adopted by the presiding judge, and federal and state laws and policies;
- addressing the training needs and resource requirements of associate judges;
- conducting annual performance evaluations for associate judges and other personnel; and
- receiving, investigating, and resolving complaints about particular associate judges or the associate judge program.

OCA would have to develop procedures and written evaluation forms to be used by the presiding judges in conducting the annual performance evaluations required by the bill. Each judge of a court that referred proceedings to an associate judge could submit to the appropriate presiding judges or to OCA information on the associate judge's performance during the preceding year.

OCA also would be required to develop caseload standards for associate judges to ensure adequate staffing.

The presiding judges of the administrative judicial regions and OCA, in cooperation with other agencies, would have to take action necessary to maximize the amount of federal money available to fund the use of associate judges. OCA could contract for available county, state, and federal money from any available source and employ personnel necessary to implement and administer the associate judge program. Such personnel would be state employees for all purposes. Likewise, the presiding judges of the administrative judicial regions, state agencies, and counties could contract for federal money available from any source to reimburse costs and salaries associated with associate judges and certain personnel and also could use available state money and public or private grants for these purposes.

The bill would take effect September 1, 2021.

SUPPORTERS

CSHB 79 would create a system of regional specialized guardianship

SAY: courts to provide under-resourced counties with assistance and oversight in handling guardianship and protective services proceedings. County courts would retain full discretion to decide whether an associate judge appointed under the bill was necessary to assist with guardianship cases in their county.

In Texas, depending on the county, guardianship proceedings are heard by a statutory probate court, constitutional county court, or statutory court-at-law. Statutory probate courts have probate judges who are specialists on the Estates Code, court investigators who review guardianship filings for potential abuse, and court visitors who visit wards. However, most counties in Texas do not have these statutory probate courts, and in these counties guardianship proceedings are handled by constitutional county courts or statutory courts-at-law.

Constitutional county court and statutory court-at-law judges are often generalists and may lack relevant legal experience for guardianship proceedings. These judges also handle other resource-intensive civil and criminal cases and often cannot afford to hire staff dedicated specifically to guardianship proceedings or expend the time necessary to handle these multi-year, ongoing cases. Despite this lack of resources and specialization, judges have a continuing responsibility to the security of wards and their estates after a guardianship is established and can be liable for damages or injury that occur in relation to their oversight in these cases.

It has been estimated that 18,000 guardianship cases are located in counties that lack the resources to monitor guardianships effectively and efficiently. CSHB 79 would remedy this problem by giving judicial administrative regions the option of providing courts with associate judges and adequate staff to assist in conducting guardianship and protective services proceedings. The associate judge program would be similar to the specialized child protection courts (CPC), which have had better outcomes than courts that handle child protection cases as part of a regular docket. A court that specializes in a particular type of case can focus its efforts on and devote added attention to the relevant legal area, and this bill would

enable the courts of Texas to provide the unique oversight and resources that guardianship cases require, improving protections for the state's most vulnerable.

CRITICS
SAY:

No concerns identified.