

BILL ANALYSIS

C.S.H.B. 79
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that, since statutory probate courts are available in only 10 of the 15 largest metropolitan counties in Texas, a significant proportion of guardianship cases are handled by courts that lack specialized resources for such cases. It has been suggested that one of the most successful innovations in the state's court system has been the development of specialized child protection courts, which are available in 130 counties and focus on the needs of children in the child protection system. There have been calls to implement a model similar to these existing specialized courts to improve statewide access to the appropriate expertise and resources. C.S.H.B. 79 seeks to provide for this improvement by establishing a system of regional specialized guardianship courts with associate judges and appropriate staffing.

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

ANALYSIS

C.S.H.B. 79 amends the Government Code to create an associate judge program for guardianship proceedings and protective services proceedings, applicable only with respect to a county court or a statutory county court, other than a statutory probate court, with jurisdiction over such proceedings. The bill requires the presiding judge of each administrative judicial region, after conferring with the judges of applicable courts in the region, to determine whether those courts require the appointment of a full-time or part-time associate judge to assist those courts in conducting guardianship proceedings or protective services proceedings. The bill expressly does not limit an applicable court's authority to issue an order in such proceedings.

C.S.H.B. 79 requires the presiding judge, after determining a need, to appoint an associate judge from a list of applicants who submit an application to the Office of Court Administration of the Texas Judicial System (OCA) and meet the qualifications prescribed by the bill. The bill provides for the following with respect to such appointments:

- the presiding judge must provide the list or appropriate notification, as applicable, to each judge of a court from which proceedings will be referred to the associate judge before appointing or reappointing the associate judge;
- each of those judges and the presiding judge of the statutory probate courts may make recommendations regarding the appointment or reappointment, as appropriate;
- an associate judge so appointed serves the applicable courts in the administrative judicial region that are specified by the appointing presiding judge;

- two or more presiding judges of administrative judicial regions may jointly appoint one or more associate judges to serve specified courts in the presiding judges' regions;
- statutory provisions relating to statutory probate court associate judges apply to an associate judge so appointed, except to the extent of a conflict;
- an associate judge so appointed may not engage in the private practice of law; and
- an associate judge so appointed has the judicial immunity of a district judge and existing immunity granted by law, express or implied, continues in full force and effect.

C.S.H.B. 79 sets out eligibility criteria and residency requirements for an associate judge appointed under the bill's provisions and provides for the judge's four-year term, at-will employment status, and compensation. The bill requires the following:

- the appointing presiding judge or judges, as applicable, must determine the host county of the associate judge, subject to the approval of the commissioners court of the proposed host county; and
- the host county must provide an adequate courtroom and quarters for the associate judge and other assisting personnel.

C.S.H.B. 79 sets out the methods of referral of the applicable proceedings to an associate judge and provides for the following with respect to such a referral:

- the associate judge may return a complex guardianship proceeding to the referring court for final disposition;
- the associate judge may render and sign any pretrial order and recommend to the referring court any order after a trial on the merits; and
- if a request for a de novo hearing before the referring court is not timely filed or the right to such a hearing is waived, the proposed order or judgment of the associate judge for the proceeding becomes the order or judgment of the referring court by operation of law without ratification by the referring court.

C.S.H.B. 79 provides for the appointment and salaries of personnel to assist the associate judge. The bill requires OCA to do the following:

- develop caseload standards for associate judges to ensure adequate staffing; and
- assist presiding judges in certain duties relating to the following matters:
 - monitoring associate judges' compliance with job performance standards, the adopted uniform practices, and federal and state laws and policies;
 - addressing training needs and resource requirements of associate judges;
 - conducting annual performance evaluations for associate judges and other personnel appointed under the bill's provisions; and
 - receiving, investigating, and resolving complaints about an individual associate judge or the associate judge program.

The referring court judges may submit associate judge performance information to the presiding judges and OCA.

C.S.H.B. 79 provides for the following with respect to applicable funding:

- OCA may contract for available county, state, and federal money from any available source;
- OCA may employ personnel, whom the bill establishes as state employees for all purposes, necessary to implement and administer the bill's provisions;
- the presiding judges of the administrative judicial regions, state agencies, and counties may do the following:
 - contract for federal money available from any source to reimburse the costs and salaries of the associate judges and other applicable personnel appointed under the bill's provisions; and
 - use available state money and public or private grants; and
- the presiding judges and OCA in cooperation with other agencies must take action necessary to maximize the amount of federal money available to fund the use of associate judges.

C.S.H.B. 79 expressly does not limit the authority of a presiding judge to assign a judge eligible for assignment under the Court Administration Act to assist in processing guardianship proceedings or protective services proceedings in a reasonable time. The bill sets out provisions relating to the appointment of a visiting associate judge if an associate judge is temporarily unable to perform the associate judge's official duties because of absence for specified reasons or if a vacancy in the position occurs.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 79 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the methods of referral of guardianship proceedings and protective services proceedings to an associate judge as follows:

- includes an authorization for a general order issued by the judge of each court the associate judge is appointed to serve to be amended or withdrawn at any time by the judge of the court issuing the order;
- does not include a requirement that, in the absence of such an order, a general order be issued by the presiding judge or judges of the administrative judicial region or regions who appointed the associate judge; and
- includes an authorization for the judge of a court the associate judge is appointed to serve, in lieu of a general order, by order to refer the applicable proceedings to the associate judge.