

SUBJECT: Setting procedures allowing a judge to determine incapacity of a guardian

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 — Colleen Rice, County Court at Law Number Two, Montgomery County; Claudia Laird

Against — None

BACKGROUND: Estates Code sec. 1203.052 specifies the circumstances under which a court can remove a guardian, including if the guardian becomes incapacitated. Sec. 1203.052(a-1) allows a court to remove a guardian for a specified circumstance on the court's own motion or on the complaint of an interested person after the guardian has been notified to answer at a set time and place.

Concerns have been raised about the lack of a method set forth in statute allowing a judge to determine on the judge's own motion if a guardian is incapacitated.

DIGEST: CSHB 3394 would authorize a court, if there was probable cause to believe that a guardian was incapacitated, on the court's own motion or on complaint of an interested person to appoint an attorney ad litem to represent the ward's interests and a court investigator or guardian ad litem to investigate whether the guardian should be removed due to incapacity. If the court determined it was necessary, the court could appoint the necessary physicians to examine the guardian to determine whether the guardian was an incapacitated person.

The bill would take effect September 1, 2021, and would apply to a guardianship created before, on, or after that date.

