

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

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Leach, Y. Davis, Krause, Meyer, Neave, White

0 nays

3 absent — Farrar, Julie Johnson, Smith

SENATE VOTE: On final passage, April 23 — 29-2 (Perry, Schwertner)

WITNESSES: *On House companion bill, HB 2803:*

For — (*Registered, but did not testify*: Guy Herman, Probate Court of Travis County; Kelsey Bernstein, Texas Association of Counties; Terry Hammond, Texas Guardianship Association; Craig Hopper; Lauren Hunt)

Against — None

On — (*Registered, but did not testify*: David Slayton, Office of Court Administration, Texas Judicial Council)

DIGEST: SB 536 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 county courts with jurisdiction over guardianship or protective services proceedings to 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. This list would be provided to each judge of a court from which proceedings would be referred before the appointment was made, and 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 regions 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.

**Additional rules.** Associate judges appointed under this bill 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 would be prohibited from engaging in the private practice of law.

**Referred proceedings.** Guardianship or protective services proceedings would be referred to an associate judge either by a general order issued by the judge of each court that the associate judge was appointed to serve or a general order issued by the presiding judge or judges of the administrative judicial region or regions who appointed the associate judge.

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

**Host county.** The presiding judge of the administrative judicial region would determine the host county of the appointed 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 adequate courtroom, quarters, and personnel for the associate judge. An associate judge would not have to reside in the host county unless otherwise required.

**Personnel.** The presiding judge or judges of the administrative judicial region or regions would be allowed to 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, each judge of a

court from which proceedings would be referred would have to be notified 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 associate judge should be reappointed.

**Visiting associate judges.** SB 536 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 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 as an associate judge appointed pursuant to this bill, a district judge, a statutory county court judge, or a statutory probate judge for at least two years.

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 above. Each judge of a court that referred proceedings to an associate judge could submit to the appropriate presiding judges or 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 be required 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 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.

The bill would take effect September 1, 2019.

**SUPPORTERS  
SAY:**

SB 536 would provide under-resourced counties with assistance and oversight in handling guardianship and protective services proceedings by creating a system of regional specialized guardianship courts.

Most counties in this state lack statutory probate courts. In these counties, guardianship and protective services proceedings are handled by judges who often are occupied with resource-intensive civil and criminal cases and may not be able to afford to hire staff dedicated to overseeing such

proceedings. It has been estimated that 18,000 guardianship cases are located in counties that lack the resources to monitor guardianships effectively and efficiently.

SB 536 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 modeled on the child protection court program, which has proven successful in promoting better outcomes than courts handling child protection cases as part of a regular docket. SB 536 would enable the courts of this state to provide sufficient oversight to guardianship and protective services proceedings, improving protections for the most vulnerable Texans.

**OPPONENTS  
SAY:**

SB 536 could allow associate judges to interfere improperly with how local judges handled guardianship cases.