

## Guardianship Reform Could Offer New Freedoms

by Terri Langford - April 26, 2015



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Dawn Carlton is intellectually disabled, but she says she manages fine on her own. She lives in a cheery South Austin apartment with her cat, Bella, where she manages her rent and bills, as well as her medication. And although it took her six years to learn, she proudly says she knows how to drive and is fascinated by low-rider cars.

"I'm a good driver," she said with a smile at her apartment off South Congress Avenue where she has lived for six years.

If Carlton doesn't understand something, her mom is a phone call and 48 miles away in Dale. The last thing she needs, she says, is a legal guardian.

"I was scared at first, but I'm going to be about having my freedom," Carlton said.

The 38-year-old woman is among those pushing for a series of bills this legislative session to change the way court-appointed guardians are used in Texas. Tens of thousands of Texas adults — including elderly people and people with disabilities — have legal guardians who make decisions about how their money is spent and where they live.

Advocates like Carlton's mother, Belinda Carlton, who is a policy analyst for the Texas Council for Developmental Disabilities, say that many adults with diminished capabilities don't need all their legal rights taken away.

"I've seen what's happened to her friends that function at her level. They're under guardianship, they're stuck at home," she said. "They want to be independent, but their parents won't let them be independent."

Appointing a guardian to manage the affairs of a disabled adult is sometimes a necessary and helpful step. In some cases, a judge appoints the Texas Department of Aging and Disability Services as the guardian of an adult who has been abused or neglected.

This may happen "if an individual has only one family member and that family member is abusing them," said Melissa Gale, an agency spokeswoman. "Or perhaps a person's capacity has diminished and an individual has befriended that person with the intent of exploiting them. These are cases where guardianship may in the best interest of a person."

Still, there have been well-documented problems in the guardianship system. In urban counties, a probate judge makes the decision on whether a guardian is needed. But most cases are decided by a local county judge, who may not have legal training. Courts sometimes fail to follow up to make sure the guardianship isn't taking advantage of those adults made wards of the state. The Houston Chronicle has reported extensively on the high emotional and financial costs to some wards who are forced into guardianship.

But there appear to be several reforms on the horizon this legislative session, including two proposals that are moving forward quickly. House Bill 39 and Senate Bill 1881 would bring more oversight to the guardianship system as well as offer a less restrictive alternative. Instead of appointing a guardian, probate and county judges could appoint a "supporter" who could help the disabled adult with decisions, something Nathan Hecht, the chief justice of the Texas Supreme Court, has called "power of attorney lite." In his State of the Judiciary speech to lawmakers in February, Hecht identified guardianship reform as a priority.

"Guardians are a godsend to some, but unfortunately, guardians can also take unfair advantage," he said during his address.

Two years ago, members of the Texas Judicial Council, a group that comes up with ways to streamline the state's legal system, began looking at the state's guardianship system and how it is expected to expand dramatically with the anticipated silver tsunami as the state's population ages. The over-65 population in Texas is expected to double by 2040.

More than 50,000 Texans now have guardians, a 60 percent increase since 2011, said David Slayton, the council's executive director.

"It's one of the fastest-growing case types in the state courts in Texas," Slayton said.

Once a guardian is selected, he or she is given power of attorney for the ward, who can no longer decide where to live or how to spend his or her money. The court-appointed guardian is paid from the ward's pocket. If they are indigent, county taxpayers pay.

HB 39, sponsored by state Rep. John Smithee, R-Amarillo, would urge everyone involved in a case to view guardianship as a last resort, or use guardians on a temporary basis. If passed, the measure would also prevent guardians from moving wards to a nursing home or group home without first notifying the ward's friends and family. And it would require attorneys involved in a guardian case to have special training.

SB 1881 by state Sen. Judith Zaffirini, D-Laredo would establish the "supporter" alternative for courts to use.