

By: Lujan

H.B. No. 2794

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a guardian ad litem in certain suits filed by the Department of Family and Protective Services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 107.002(b-1), Family Code, is amended to read as follows:

(b-1) In addition to the duties required by Subsection (b), a guardian ad litem appointed for a child in a proceeding under Chapter 262 or 263 or Section 264.203 shall:

(1) review the medical care provided to the child;

(2) in a developmentally appropriate manner, seek to elicit the child's opinion on the medical care provided;

(3) for a child at least 16 years of age, ascertain whether the child has received the following documents:

(A) a certified copy of the child's birth certificate;

(B) a social security card or a replacement social security card;

(C) a driver's license or personal identification certificate under Chapter 521, Transportation Code; and

(D) any other personal document the Department of Family and Protective Services determines appropriate; and

(4) seek to elicit in a developmentally appropriate

1 manner the name of any adult, particularly an adult residing in the
2 child's community, who could be a relative or designated caregiver
3 for the child and immediately provide the names of those
4 individuals to the Department of Family and Protective Services.

5 SECTION 2. Sections [107.031](#)(a) and (b), Family Code, are
6 amended to read as follows:

7 (a) ~~A [In a suit filed by a governmental entity requesting~~
8 ~~termination of the parent-child relationship or appointment of the~~
9 ~~entity as conservator of the child, the]~~ court may appoint a
10 charitable organization composed of volunteer advocates whose
11 charter mandates the provision of services to allegedly abused and
12 neglected children or an individual who has received the court's
13 approved training regarding abused and neglected children and who
14 has been certified by the court to appear at court hearings as a
15 guardian ad litem for the child or as a volunteer advocate for the
16 child in:

17 (1) a suit filed by a governmental entity requesting
18 termination of the parent-child relationship or appointment of the
19 entity as conservator of the child; or

20 (2) a suit filed by a governmental entity under
21 Section [264.203](#).

22 (b) In a suit other than a suit described by Subsection (a)
23 ~~[filed by a governmental entity requesting termination of the~~
24 ~~parent-child relationship or appointment of the entity as~~
25 ~~conservator of the child]~~, the court may appoint a charitable
26 organization composed of volunteer advocates whose training
27 provides for the provision of services in private custody disputes

1 or a person who has received the court's approved training
2 regarding the subject matter of the suit and who has been certified
3 by the court to appear at court hearings as a guardian ad litem for
4 the child or as a volunteer advocate for the child. A person
5 appointed under this subsection is not entitled to fees under
6 Section 107.023.

7 SECTION 3. Section 264.203, Family Code, is amended by
8 adding Subsections (g-1), (g-2), (g-3), and (g-4) to read as
9 follows:

10 (g-1) The court may appoint a guardian ad litem to represent
11 the best interests of the child immediately after the filing of the
12 petition but before the hearing. The guardian ad litem for the
13 child shall have the powers and duties of a guardian ad litem for a
14 child under Chapter 107. The guardian ad litem appointed for the
15 child may be:

16 (1) a charitable organization composed of volunteer
17 advocates or an individual volunteer advocate appointed under
18 Subchapter C;

19 (2) an adult with the competence, training, and
20 expertise the court determines is sufficient to represent the best
21 interests of the child; or

22 (3) an attorney appointed in the dual role.

23 (g-2) The court may not appoint a guardian ad litem in a suit
24 filed by a governmental entity if an attorney is appointed in the
25 dual role unless the court appoints another person to serve as
26 guardian ad litem for the child and restricts the role of the
27 attorney to acting as an attorney ad litem for the child.

1 (g-3) The court may appoint an attorney to serve as guardian
2 ad litem for a child without appointing the attorney to serve in the
3 dual role only if the attorney is specifically appointed to serve
4 only in the role of guardian ad litem. An attorney appointed solely
5 as a guardian ad litem:

6 (1) may take only those actions that may be taken by a
7 nonattorney guardian ad litem; and

8 (2) may not:

9 (A) perform legal services in the case; or

10 (B) take any action that is restricted to a
11 licensed attorney, including engaging in discovery other than as a
12 witness, making opening and closing statements, or examining
13 witnesses.

14 (g-4) The court may appoint the person appointed as guardian
15 ad litem for the child under Section 51.11 to also serve as the
16 guardian ad litem for the child under this section if the person is
17 qualified under Chapter 107 to serve as guardian ad litem.

18 SECTION 4. Section 264.601, Family Code, is amended to read
19 as follows:

20 Sec. 264.601. DEFINITIONS. In this subchapter:

21 (1) "Allegedly abused [~~Abused~~] or neglected child"
22 means a child:

23 (A) who is:

24 (i) [~~(A)~~] the subject of a suit affecting
25 the parent-child relationship filed by a governmental entity; and

26 (ii) [~~(B)~~] under the control or supervision
27 of the department; or

1 (B) who is the subject of a suit filed by a
2 governmental entity under Section 264.203.

3 (2) "Volunteer advocate program" means a
4 volunteer-based, nonprofit program that:

5 (A) provides advocacy services to allegedly
6 abused or neglected children with the goal of promoting [~~obtaining~~
7 ~~a permanent placement for a child that is in~~] the child's best
8 interest; and

9 (B) complies with recognized standards for
10 volunteer advocate programs.

11 SECTION 5. Section 264.602(a), Family Code, is amended to
12 read as follows:

13 (a) The statewide organization with which the commission
14 contracts under Section 264.603 shall contract for services with
15 eligible volunteer advocate programs to provide advocacy services
16 to allegedly abused or neglected children.

17 SECTION 6. Section 264.604(a), Family Code, is amended to
18 read as follows:

19 (a) A person is eligible for a contract under Section
20 264.602 only if the person is a public or private nonprofit entity
21 that operates a volunteer advocate program that:

22 (1) uses individuals appointed as volunteer advocates
23 or guardians ad litem by the court to provide for the needs of
24 allegedly abused or neglected children;

25 (2) has provided court-appointed advocacy services
26 for at least six months;

27 (3) provides court-appointed advocacy services for at

1 least 10 children each month; and

2 (4) has demonstrated that the program has local
3 judicial support.

4 SECTION 7. Section 264.606, Family Code, is amended to read
5 as follows:

6 Sec. 264.606. CRITERIA FOR AWARD OF CONTRACTS. The
7 statewide organization with which the commission contracts under
8 Section 264.603 shall consider the following in awarding a contract
9 under Section 264.602:

10 (1) the volunteer advocate program's eligibility for
11 and use of funds from local, state, or federal governmental
12 sources, philanthropic organizations, and other sources;

13 (2) community support for the volunteer advocate
14 program as indicated by financial contributions from civic
15 organizations, individuals, and other community resources;

16 (3) whether the volunteer advocate program provides
17 services that promote the best interest of children [~~encourage the~~
18 ~~permanent placement of children through reunification with their~~
19 ~~families or timely placement with an adoptive family~~]; and

20 (4) whether the volunteer advocate program has the
21 endorsement and cooperation of the local juvenile court system.

22 SECTION 8. Section 264.607, Family Code, is amended to read
23 as follows:

24 Sec. 264.607. CONTRACT REQUIREMENTS. The commission shall
25 require that a contract under Section 264.602 require the volunteer
26 advocate program to:

27 (1) make quarterly and annual financial reports on a

1 form provided by the commission;

2 (2) cooperate with inspections and audits that the
3 commission makes to ensure service standards and fiscal
4 responsibility; and

5 (3) provide as a minimum:

6 (A) independent and factual information in
7 writing to the court and to counsel for the parties involved
8 regarding the child;

9 (B) advocacy through the courts for the best
10 interest of the child [~~permanent home placement and rehabilitation~~
11 ~~services for the child~~];

12 (C) monitoring of the child to ensure the safety
13 of the child and to prevent unnecessary movement of the child to
14 multiple temporary placements;

15 (D) reports in writing to the presiding judge and
16 to counsel for the parties involved;

17 (E) community education relating to child abuse
18 and neglect;

19 (F) referral services to existing community
20 services;

21 (G) a volunteer recruitment and training
22 program, including adequate screening procedures for volunteers;

23 (H) procedures to assure the confidentiality of
24 records or information relating to the child; and

25 (I) compliance with the standards adopted under
26 Section [264.602](#).

27 SECTION 9. The changes in law made by this Act apply to a

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1 suit filed by a governmental entity that is pending in a trial court
2 on or filed on or after the effective date of this Act.

3 SECTION 10. This Act takes effect September 1, 2023.