

By: Goodman, et al.

H.B. No. 307

Substitute the following for H.B. No. 307:

By: Goodman

C.S.H.B. No. 307

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to court-ordered representation in suits affecting the  
3 parent-child relationship.

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

5 SECTION 1. Sections 107.002(b), (c), and (e), Family Code,  
6 are amended to read as follows:

7 (b) A guardian ad litem appointed for the child under this  
8 chapter shall:

9 (1) within a reasonable time after the appointment,  
10 interview:

11 (A) the child in a developmentally appropriate  
12 manner, if the child is four years of age or older;

13 (B) each person who has significant knowledge of  
14 the child's history and condition, including any foster parent of  
15 the child; and

16 (C) the parties to the suit;

17 (2) seek to elicit in a developmentally appropriate  
18 manner the child's expressed objectives [~~of representation~~];

19 (3) consider the child's expressed objectives [~~of~~  
20 ~~representation~~] without being bound by those objectives;

21 (4) encourage settlement and the use of alternative  
22 forms of dispute resolution; and

23 (5) perform any specific task directed by the court.

24 (c) A guardian ad litem appointed for the child under this

1 chapter [~~is not a party to the suit but~~] is entitled to:

2 (1) receive a copy of each pleading or other paper  
3 filed with the court in the case in which the guardian ad litem is  
4 appointed;

5 (2) receive notice of each hearing in the case;

6 (3) participate in case staffings by an authorized  
7 agency concerning the child;

8 (4) attend all legal proceedings in the case but may  
9 not call or question a witness or otherwise provide legal services  
10 unless the guardian ad litem is a licensed attorney who has been  
11 appointed in the dual role;

12 (5) review and sign, or decline to sign, an agreed  
13 order affecting the child; and

14 (6) explain the basis for the guardian ad litem's  
15 opposition to the agreed order if the guardian ad litem does not  
16 agree to the terms of a proposed order.

17 (e) Unless the guardian ad litem is an attorney who has been  
18 appointed in the dual role and subject to the Texas Rules of  
19 Evidence, the court shall ensure in a hearing or in a trial on the  
20 merits that a guardian ad litem has an opportunity to testify  
21 regarding, and is permitted to [ex] submit a report regarding, the  
22 guardian ad litem's recommendations relating to [regarding]:

23 (1) the best interests of the child; and

24 (2) the bases for the guardian ad litem's  
25 recommendations.

26 SECTION 2. Section 107.003, Family Code, is amended to read  
27 as follows:

1           Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR  
2 CHILD AND AMICUS ATTORNEY. An attorney ad litem appointed to  
3 represent a child or an amicus attorney appointed to assist the  
4 court:

5           (1) shall:

6           (A) subject to Rules 4.02, 4.03, and ~~[Rule]~~ 4.04,  
7 Texas Disciplinary Rules of Professional Conduct, and within a  
8 reasonable time after the appointment, interview:

9           (i) the child in a developmentally  
10 appropriate manner, if the child is four years of age or older;

11           (ii) each person who has significant  
12 knowledge of the child's history and condition, including any  
13 foster parent of the child; and

14           (iii) the parties to the suit;

15           (B) seek to elicit in a developmentally  
16 appropriate manner the child's expressed objectives of  
17 representation;

18           (C) consider the impact on the child in  
19 formulating the attorney's presentation of the child's expressed  
20 objectives of representation to the court;

21           (D) investigate the facts of the case to the  
22 extent the attorney considers appropriate;

23           (E) ~~[(C)]~~ obtain and review copies of relevant  
24 records relating to the child as provided by Section 107.006;

25           (F) ~~[(D)]~~ participate in the conduct of the  
26 litigation to the same extent as an attorney for a party;

27           (G) ~~[(E)]~~ take any action consistent with the

1 child's interests that the attorney considers necessary to expedite  
2 the proceedings; ~~and~~

3 (H) [~~F~~] encourage settlement and the use of  
4 alternative forms of dispute resolution; and

5 (I) review and sign, or decline to sign, a  
6 proposed or agreed order affecting the child;

7 (2) must be trained in child advocacy or have  
8 experience determined by the court to be equivalent to that  
9 training; and

10 (3) is entitled to:

11 (A) request clarification from the court if the  
12 role of the attorney is ambiguous;

13 (B) request a hearing or trial on the merits;

14 (C) consent or refuse to consent to an interview  
15 of the child by another attorney;

16 (D) receive a copy of each pleading or other  
17 paper filed with the court;

18 (E) [~~B~~] receive notice of each hearing in the  
19 suit;

20 (F) [~~C~~] participate in any case staffing  
21 concerning the child conducted by an authorized agency; and

22 (G) [~~D~~] attend all legal proceedings in the  
23 suit.

24 SECTION 3. Section 107.004, Family Code, is amended to read  
25 as follows:

26 Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR  
27 CHILD. Except as otherwise provided by this chapter, the attorney

1 ad litem appointed for a child shall, in a developmentally  
2 appropriate manner:

3 (1) [~~seek to elicit in a developmentally appropriate~~  
4 ~~manner the child's expressed objectives of representation,~~

5 [~~2~~] advise the child;

6 (2) [~~3~~] provide guidance to the child,

7 [~~4~~] represent the child's expressed objectives of  
8 representation and follow the child's expressed objectives of  
9 representation during the course of litigation if the attorney ad  
10 litem determines that the child is competent to understand the  
11 nature of an attorney-client relationship and has formed that  
12 relationship with the attorney ad litem;

13 [~~5~~ ~~consider the impact on the child in formulating~~  
14 ~~the attorney ad litem's presentation of the child's expressed~~  
15 ~~objectives of representation to the court,~~] and

16 (3) as appropriate, considering the nature of the  
17 appointment, [~~6~~] become familiar with[+

18 [~~A~~] the American Bar Association's standards  
19 of practice for attorneys who represent children in abuse and  
20 neglect cases, [~~and~~

21 [~~B~~] the suggested amendments to those  
22 standards adopted by the National Association of Counsel for  
23 Children, and the American Bar Association's standards of practice  
24 for attorneys who represent children in custody cases.

25 SECTION 4. Section 107.005(b), Family Code, is amended to  
26 read as follows:

27 (b) An amicus attorney shall, in a developmentally

1 appropriate manner:

2 (1) [~~seek to elicit in a developmentally appropriate~~  
3 ~~manner the child's expressed objectives of representation;~~

4 [~~(2)~~] with the consent of the child, ensure that the  
5 child's expressed objectives of representation are made known to  
6 the court;

7 (2) [~~(3)~~] ~~consider the impact on the child in~~  
8 ~~formulating the amicus attorney's presentation of the child's~~  
9 ~~expressed objectives of representation to the court;~~

10 [(4)] ~~review and sign, or decline to sign, an agreed~~  
11 ~~order affecting the child;~~

12 [(5)] ~~explain the basis for the amicus attorney's~~  
13 ~~opposition to the agreed order if the amicus attorney does not agree~~  
14 ~~to the terms of a proposed order;~~

15 [(6)] explain the role of the amicus attorney to the  
16 child; [~~and~~]

17 (3) [(7)] inform the child that the amicus attorney  
18 may use information that the child provides in providing assistance  
19 to the court; and

20 (4) become familiar with the American Bar  
21 Association's standards of practice for attorneys who represent  
22 children in custody cases.

23 SECTION 5. Section 107.006, Family Code, is amended to read  
24 as follows:

25 Sec. 107.006. ACCESS TO CHILD AND INFORMATION RELATING TO  
26 CHILD. (a) Except as provided by Subsection (c), in conjunction  
27 with an appointment under this chapter, other than an appointment

1 of an attorney ad litem for an adult or a parent, the court shall  
2 issue an order authorizing the attorney ad litem, guardian ad litem  
3 for the child, or amicus attorney to have immediate access to [+]

4 [~~(1)~~] the child[+] and

5 [~~(2)~~] any [~~otherwise privileged or confidential~~]  
6 information relating to the child.

7 (b) Without requiring a further order or release, the  
8 custodian of any relevant records relating to the child, including  
9 records regarding social services, [~~drug and alcohol treatment, or~~  
10 ~~medical or mental health evaluation or treatment of the child,~~] law  
11 enforcement records, school records, records of a probate or court  
12 proceeding, and records of a trust or account for which the child is  
13 a beneficiary, shall provide access to a person authorized to  
14 access the records under Subsection (a).

15 (c) A medical, mental health, or drug or alcohol treatment  
16 record of a child [~~at least 12 years of age~~] that is privileged or  
17 confidential under other law may be released to a person appointed  
18 under Subsection (a) only in accordance with the other law.

19 SECTION 6. Sections 107.008(b) and (c), Family Code, are  
20 amended to read as follows:

21 (b) An [~~Except as provided by Subsection (c), an~~] attorney  
22 ad litem or an attorney appointed in the dual role who determines  
23 that the child cannot meaningfully formulate the child's expressed  
24 objectives of representation [~~under Subsection (a)~~] may present to  
25 the court a position that the attorney determines will serve the  
26 best interests of the child.

27 (c) If a guardian ad litem has been appointed for the child

1 in a suit filed by a governmental entity requesting termination of  
2 the parent-child relationship or appointment of the entity as  
3 conservator of the child, an [An] attorney ad litem [~~or attorney~~  
4 ~~appointed in the dual role]~~ who determines that the child cannot  
5 meaningfully formulate the child's expressed objectives of  
6 representation [~~under Subsection (a) shall, if a guardian ad litem~~  
7 ~~has been appointed for the child]:~~

8 (1) shall consult with the guardian ad litem and,  
9 without being bound by the guardian ad litem's opinion or  
10 recommendation, ensure that the guardian ad litem's opinion and  
11 basis for any recommendation regarding the best interests of the  
12 child are presented to the court; and

13 (2) may present to the court a position that the  
14 attorney determines will serve [~~present the child's objectives of~~  
15 ~~representation to the court based on the guardian ad litem's~~  
16 ~~opinion regarding]~~ the best interests of the child.

17 SECTION 7. Section 107.009, Family Code, is amended to read  
18 as follows:

19 Sec. 107.009. IMMUNITY. (a) A guardian ad litem, an  
20 attorney ad litem, or an amicus attorney appointed under this  
21 chapter is not liable for civil damages arising from an action  
22 taken, a recommendation made, or an opinion given in the capacity of  
23 guardian ad litem, attorney ad litem, or amicus attorney.

24 (b) Subsection (a) does not apply to an action taken, ~~[or]~~ a  
25 recommendation made, or an opinion given:

26 (1) with conscious indifference or reckless disregard  
27 to the safety of another;



1 (2) in bad faith or with malice; or

2 (3) that is grossly negligent or wilfully wrongful.

3 SECTION 8. Section 107.021, Family Code, is amended to read  
4 as follows:

5 Sec. 107.021. DISCRETIONARY APPOINTMENTS. (a) In a suit in  
6 which the best interests of a child are at issue, other than a suit  
7 filed by a governmental entity requesting termination of the  
8 parent-child relationship or appointment of the entity as  
9 conservator of the child, the court may appoint one of the  
10 following:

11 (1) an amicus attorney;

12 (2) an attorney ad litem; or

13 (3) a guardian ad litem.

14 (a-1) In a suit requesting termination of the parent-child  
15 relationship that is not filed by a governmental entity, the court  
16 shall, unless the court finds that the interests of the child will  
17 be represented adequately by a party to the suit whose interests are  
18 not in conflict with the child's interests, appoint one of the  
19 following:

20 (1) an amicus attorney; or

21 (2) an attorney ad litem.

22 (b) In determining whether to make an appointment under this  
23 section, the court:

24 (1) shall:

25 (A) give due consideration to the ability of the  
26 parties to pay reasonable fees to the appointee; and

27 (B) balance the child's interests against the

1 cost to the parties that would result from an appointment by taking  
2 into consideration the cost of available alternatives for resolving  
3 issues without making an appointment;

4 (2) may make an appointment only if the court finds  
5 that the appointment is necessary to ensure the determination of  
6 the best interests of the child, unless the appointment is  
7 otherwise required by this code; and

8 (3) may not require a person appointed under this  
9 section to serve without reasonable compensation for the services  
10 rendered by the person.

11 SECTION 9. Section 107.022, Family Code, is amended to read  
12 as follows:

13 Sec. 107.022. CERTAIN PROHIBITED APPOINTMENTS. In a suit  
14 other than a suit filed by a governmental entity requesting  
15 termination of the parent-child relationship or appointment of the  
16 entity as conservator of the child, the court may not appoint:

17 (1) an attorney to serve in the dual role; or

18 (2) a volunteer advocate to serve as guardian ad litem  
19 for a child unless the training of the volunteer advocate is  
20 designed for participation in suits other than suits filed by a  
21 governmental entity requesting termination of the parent-child  
22 relationship or appointment of the entity as conservator of the  
23 child.

24 SECTION 10. Section 107.023, Family Code, is amended by  
25 amending Subsection (a) and adding Subsection (d) to read as  
26 follows:

27 (a) In a suit other than a suit filed by a governmental

1 entity requesting termination of the parent-child relationship or  
2 appointment of the entity as conservator of the child, in addition  
3 to the attorney's fees that may be awarded under Chapter 106, the  
4 following persons are entitled to reasonable fees and expenses in  
5 an amount set by the court and ordered to be paid by one or more  
6 parties to the suit:

7 (1) an attorney appointed as an amicus attorney or as  
8 an attorney ad litem for the child; and

9 (2) a professional who holds a relevant professional  
10 license and who is appointed as guardian ad litem for the child,  
11 other than a volunteer advocate.

12 (d) The court may determine that fees awarded under this  
13 subchapter to an amicus attorney, an attorney ad litem for the  
14 child, or a guardian ad litem for the child are necessities for the  
15 benefit of the child.

16 SECTION 11. Section 107.031, Family Code, is amended to  
17 read as follows:

18 Sec. 107.031. VOLUNTEER ADVOCATES. (a) In a suit filed by  
19 a governmental entity requesting termination of the parent-child  
20 relationship or appointment of the entity as conservator of the  
21 child, the court may appoint a charitable organization composed of  
22 volunteer advocates whose charter mandates the provision of  
23 services to allegedly abused and neglected children or an  
24 individual who has received the court's approved training regarding  
25 abused and neglected children and who has been certified by the  
26 court to appear at court hearings as a guardian ad litem for the  
27 child or as a volunteer advocate for the child.

1 (b) In a suit other than a suit filed by a governmental  
2 entity requesting termination of the parent-child relationship or  
3 appointment of the entity as conservator of the child, the court may  
4 appoint a charitable organization composed of volunteer advocates  
5 whose training provides for the provision of services in private  
6 custody disputes or a person who has received the court's approved  
7 training regarding the subject matter of the suit and who has been  
8 certified by the court to appear at court hearings as a guardian ad  
9 litem for the child or as a volunteer advocate for the child. A  
10 person appointed under this subsection is not entitled to fees  
11 under Section 107.023.

12 (c) A court-certified volunteer advocate appointed under  
13 this section may be assigned to act as a surrogate parent for the  
14 child, as provided by 20 U.S.C. Section 1415(b), if:

15 (1) the child is in the conservatorship of the  
16 Department of Family and Protective Services;

17 (2) the volunteer advocate is serving as guardian ad  
18 litem for the child; and

19 (3) a foster parent of the child is not acting as the  
20 child's parent under Section 29.015, Education Code.

21 SECTION 12. Section 2.103(e), Family Code, is amended to  
22 read as follows:

23 (e) The court shall appoint an amicus attorney or an  
24 attorney [~~a guardian~~] ad litem to represent the minor in the  
25 proceeding [~~and to speak for or against the petition in the manner~~  
26 ~~the guardian ad litem believes to be in the best interest of the~~  
27 ~~minor~~]. The court shall specify a fee to be paid by the minor for

1 the services of the amicus attorney or attorney [~~guardian~~] ad  
2 litem. The fee shall be collected in the same manner as other costs  
3 of the proceeding.

4 SECTION 13. Section 31.002(b), Family Code, is amended to  
5 read as follows:

6 (b) A parent of the petitioner must verify the petition,  
7 except that if a managing conservator or guardian of the person has  
8 been appointed, the petition must be verified by that person. If  
9 the person who is to verify the petition is unavailable or that  
10 person's whereabouts are unknown, the amicus attorney or attorney  
11 [~~guardian~~] ad litem shall verify the petition.

12 SECTION 14. Section 31.004, Family Code, is amended to read  
13 as follows:

14 Sec. 31.004. REPRESENTATION OF PETITIONER [~~GUARDIAN AD~~  
15 ~~LITEM~~]. The court shall appoint an amicus attorney or attorney [~~a~~  
16 ~~guardian~~] ad litem to represent the interest of the petitioner at  
17 the hearing.

18 SECTION 15. Chapter 101, Family Code, is amended by adding  
19 Sections 101.0017, 101.0018, and 101.0145 to read as follows:

20 Sec. 101.0017. AMICUS ATTORNEY. "Amicus attorney" has the  
21 meaning assigned by Section 107.001.

22 Sec. 101.0018. ATTORNEY AD LITEM. "Attorney ad litem" has  
23 the meaning assigned by Section 107.001.

24 Sec. 101.0145. GUARDIAN AD LITEM. "Guardian ad litem" has  
25 the meaning assigned by Section 107.001.

26 SECTION 16. Section 105.004, Family Code, is amended to  
27 read as follows:

1           Sec. 105.004. PREFERENTIAL SETTING. After a hearing, the  
2 court may:

3           (1) grant a motion filed by a party or by the amicus  
4 attorney or attorney [~~or guardian~~] ad litem for the child for a  
5 preferential setting for a trial on the merits; and

6           (2) give precedence to that hearing over other civil  
7 cases if the court finds that the delay created by ordinary  
8 scheduling practices will unreasonably affect the best interest of  
9 the child.

10          SECTION 17. Section 160.608(c), Family Code, is amended to  
11 read as follows:

12          (c) In a proceeding involving the application of this  
13 section, a child who is a minor or is incapacitated must be  
14 represented by an amicus attorney or attorney [~~a guardian~~] ad  
15 litem.

16          SECTION 18. Section 160.612(b), Family Code, is amended to  
17 read as follows:

18          (b) The court shall appoint an amicus attorney or attorney  
19 ad litem to represent a child who is a minor or is incapacitated if  
20 the child is a party or the court finds that the interests of the  
21 child are not adequately represented.

22          SECTION 19. Section 161.202, Family Code, is amended to  
23 read as follows:

24          Sec. 161.202. PREFERENTIAL SETTING. In a termination suit,  
25 after a hearing, the court shall grant a motion for a preferential  
26 setting for a final hearing on the merits filed by a party to the  
27 suit or by the amicus attorney or attorney [~~or guardian~~] ad litem

1 for the child and shall give precedence to that hearing over other  
2 civil cases if:

3 (1) termination would make the child eligible for  
4 adoption; and

5 (2) discovery has been completed or sufficient time  
6 has elapsed since the filing of the suit for the completion of all  
7 necessary and reasonable discovery if diligently pursued.

8 SECTION 20. Section 203.004(a), Family Code, is amended to  
9 read as follows:

10 (a) A domestic relations office may:

11 (1) collect and disburse child support payments that  
12 are ordered by a court to be paid through a domestic relations  
13 registry;

14 (2) maintain records of payments and disbursements  
15 made under Subdivision (1);

16 (3) file a suit, including a suit to:

17 (A) establish paternity;

18 (B) enforce a court order for child support or  
19 for possession of and access to a child; and

20 (C) modify or clarify an existing child support  
21 order;

22 (4) provide an informal forum in which:

23 (A) mediation is used to resolve disputes in an  
24 action under Subdivision (3); or

25 (B) an agreed repayment schedule for delinquent  
26 child support is negotiated as an alternative to filing a suit to  
27 enforce a court order for child support under Subdivision (3);

1 (5) prepare a court-ordered social study;

2 (6) represent a child as an amicus attorney, an  
3 attorney ad litem, or a guardian ad litem in a suit in which:

4 (A) termination of the parent-child relationship  
5 is sought; or

6 (B) conservatorship of or access to a child is  
7 contested;

8 (7) serve as a friend of the court;

9 (8) provide predivorce counseling ordered by a court;

10 (9) provide community supervision services under  
11 Chapter 157;

12 (10) provide information to assist a party in  
13 understanding, complying with, or enforcing the party's duties and  
14 obligations under Subdivision (3); and

15 (11) provide, directly or through a contract,  
16 visitation services, including supervision of court-ordered  
17 visitation, visitation exchange, or other similar services.

18 SECTION 21. Section 231.109(e), Family Code, is amended to  
19 read as follows:

20 (e) An attorney employed by the Title IV-D agency or as  
21 otherwise provided by this chapter may not be appointed or act as an  
22 amicus attorney [~~a guardian ad litem~~] or attorney ad litem for a  
23 child or another party.

24 SECTION 22. Section 235.001(b), Family Code, is amended to  
25 read as follows:

26 (b) The state case registry shall provide to a custodial  
27 parent under Subsection (a) who makes a request for information or,



1 to the extent provided by federal law, to an amicus attorney,  
2 attorney ad litem, friend of the court, guardian ad litem, or  
3 domestic relations office designated by the parent any information  
4 in the registry required by 42 U.S.C. Section 654a(e) concerning  
5 the parent's case.

6 SECTION 23. Section 235.002, Family Code, is amended to  
7 read as follows:

8 Sec. 235.002. REQUEST TO INCLUDE CASE IN REGISTRY. The case  
9 of a custodial parent whose case would otherwise not be included in  
10 the state case registry under 42 U.S.C. Section 654a may be included  
11 in the state case registry by making a written request to the  
12 registry either directly or through an amicus attorney, attorney ad  
13 litem, friend of the court, guardian ad litem, or domestic  
14 relations office designated by the custodial parent. The request  
15 must be accompanied by a certified copy of the court order requiring  
16 the payment of child support.

17 SECTION 24. Section 263.303(a), Family Code, is amended to  
18 read as follows:

19 (a) Not later than the 10th day before the date set for each  
20 permanency hearing other than the first permanency hearing, the  
21 department or other authorized agency shall file with the court and  
22 provide to each party, the child's attorney ad litem, the child's  
23 guardian ad litem, and the child's volunteer advocate a permanency  
24 progress report unless the court orders a different period for  
25 providing the report.

26 SECTION 25. The changes in law made by this Act to Chapter  
27 107, Family Code, apply only to a suit affecting the parent-child

1 relationship filed on or after the effective date of this Act. A  
2 suit filed before the effective date of this Act is governed by the  
3 law in effect on the date the suit was filed, and the former law is  
4 continued in effect for that purpose.

5 SECTION 26. The changes in law made by this Act to Section  
6 2.103, Family Code, apply only to a suit under that section filed on  
7 or after the effective date of this Act. A suit filed before the  
8 effective date of this Act is governed by the law in effect on the  
9 date the suit was filed, and the former law is continued in effect  
10 for that purpose.

11 SECTION 27. The changes in law made by this Act to Sections  
12 31.002 and 31.004, Family Code, apply only to a suit under Chapter  
13 31, Family Code, filed on or after the effective date of this Act. A  
14 suit filed before the effective date of this Act is governed by the  
15 law in effect on the date the suit was filed, and the former law is  
16 continued in effect for that purpose.

17 SECTION 28. The changes in law made by this Act to Sections  
18 160.608 and 160.612, Family Code, apply only to a proceeding under  
19 Subchapter G, Chapter 160, Family Code, filed on or after the  
20 effective date of this Act. A proceeding filed before the effective  
21 date of this Act is governed by the law in effect on the date the  
22 proceeding was filed, and the former law is continued in effect for  
23 that purpose.

24 SECTION 29. This Act takes effect September 1, 2005.