

BILL ANALYSIS

Senate Research Center

S.B. 1759
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Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, an attorney ad litem is provided only for indigent parents opposing termination of the parent-child relationship. S.B. 1759 extends protection of parental rights by providing an attorney ad litem for indigent parents opposing the appointment of a conservator for a child. Additionally, this bill protects parental rights by requiring an attorney ad litem to be appointed to represent the interests of missing or unknown parents, who are often victims of violence themselves, and to attempt to locate them for the court. Finally, this bill requires that attorneys appointed to serve as an attorney ad litem to complete continuing legal education relating to the representation of a child in certain proceedings upon appointment and each year thereafter.

S.B. 1759 amends current law relating to the procedures for the appointment of and the duties of attorneys ad litem in certain suits affecting the parent-child relationship.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 107.004, Family Code, by amending Subsections (b) and (c) and adding Subsection (b-1), as follows:

(b) Requires an attorney ad litem appointed for a child in a proceeding under Subtitle E (Protection of the Child), rather than under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) or 263 (Review of Placement of Children Under Care of Department of Protective and Regulatory Services), to complete at least three hours of continuing legal education relating to representing children in child protection cases as described by Subsection (c) as soon as practicable after the attorney ad litem is appointed, rather than complete at least three hours of continuing legal education relating to child advocacy as described by Subsection (c) as soon as practicable after the attorney ad litem's appointment.

(b-1) Requires an attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a child in a child protection case to complete at least three hours of continuing legal education relating to the representation of a child in a proceeding under Subtitle E each year before the anniversary date of the attorney's listing.

(c) Requires that the continuing legal education required by Subsections (b) and (b-1), rather than Subsection (b), in addition to other requirements, focus on the duties of an attorney ad litem in, and the procedures of and best practices for, representing a child in a proceeding under Subtitle E, rather than Chapter 262 or 263.

SECTION 2. Amends Section 107.013(a), Family Code, to require the court to appoint an attorney ad litem to represent the interests of certain individuals, including an indigent parent of a child who responds in opposition to the termination or appointment, in a suit filed by a

governmental entity under Subtitle E in which termination of the parent-child relationship or appointment of a conservator for the child is requested.

SECTION 3. Amends Section 107.0131, Family Code, as follows:

Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR PARENT.

(a) Provides that an attorney ad litem appointed under Section 107.013 to represent the interests of a parent:

(1) is required to meet certain conditions, including abide by the parent's objectives for representation, and complete at least three hours of continuing legal education relating to representing parents in child protection cases, rather than relating to child protection law, as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education, and excluding abiding by the parent's objectives of representation; and

(2) is entitled to take certain actions.

Deletes existing text requiring an attorney ad litem appointed under Section 107.013 to represent the interest of a parent to be trained in child protection law or have experience determined by the court to be equivalent to that training. Makes nonsubstantive changes.

(b) Requires that the continuing legal education required by Subsection (a)(1)(J) (relating to requiring the an attorney ad litem appointed under Section 107.013 to complete at least three hours of certain legal education) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, representing a parent in a proceeding under Subtitle E, rather than Chapter 262 or 263. Makes a conforming change.

(c) Requires an attorney who is on the list by the court as being qualified for appointment as an attorney ad litem for a parent in a child protection case to complete at least three hours of continuing legal education relating to the representation of a parent in a proceeding under subtitle E each year before the anniversary date of the attorney's listing.

SECTION 4. Amends Sections 107.0132(a) and (d), Family Code, as follows:

(a) Provides that except as provided by Subsections (b) (relating to requiring the attorney ad litem to provide certain information to each party and the court and requesting court approval for the attorney ad litem to assist the alleged father in establishing paternity under certain circumstances) and (d), an attorney ad litem appointed under Section 107.013 (Mandatory Appointment of Attorney Ad Litem for Parent) to represent the interests of an alleged father is only required to, rather than is required to, perform certain tasks.

(d) Requires the court to discharge the attorney from the appointment on receipt of the written summary of the attorney ad litem's efforts to identify or locate the alleged father required by this subsection.

SECTION 5. Amends Subchapter B, Chapter 107, Family Code, by adding Section 107.014, as follows:

Sec. 107.014. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CERTAIN PARENTS. (a) Provides that except as provided by Subsections (b) and (e), an attorney ad litem appointed under Section 107.013 to represent the interests of a parent whose identity or location is unknown or who has been served by citation by publication is only required to:

(1) conduct an investigation regarding the petitioner's due diligence in locating the parent;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the parent; and

(3) conduct an independent investigation to identify or locate the parent, as applicable.

(b) Requires the attorney ad litem, if the attorney ad litem identifies and locates the parent, to:

(1) provide to each party and the court the parent's name and address and any other available locating information unless the court finds that:

(A) disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury; or

(B) the parent has been a victim of family violence; and

(2) if appropriate, assist the parent in making a claim of indigence for the appointment of an attorney.

(c) Authorizes the court, if the court makes a finding described by Subsection (b)(1)(A) or (B), to order that the information not be disclosed or render any other order the court considers necessary.

(d) Authorizes the court to appoint the attorney ad litem to continue to represent the parent under Section 107.013(a)(1) (relating to requiring the court, under certain conditions, to appoint an attorney ad litem to represent the interests of an indigent parent of the child who responds in opposition to the termination or appointment) if the court determines the parent is indigent.

(e) Requires the attorney ad litem to submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent if the attorney ad litem is unable to identify or locate the parent. Requires the court to discharge the attorney from the appointment on receipt of the summary required by this subsection.

SECTION 6. Amends Section 262.1015(d), Family Code, to provide that a temporary restraining order under this section expires not later than the 14th day after the date the order was rendered, unless the court grants an extension under Section 262.201(a-3).

SECTION 7. Amends Section 262.102, Family Code, by adding Subsection (d), to require that the temporary restraining order or attachment of a child rendered by the court contain certain content in a certain format.

SECTION 8. Amends Section 262.103, Family Code, to provide that a temporary restraining order or attachment of the child issued under this chapter expires not later than 14 days after the date it is issued unless it is extended as provided by the Texas Rules of Civil Procedure or Section 262.201(a-3).

SECTION 9. Amends Section 262.201, Family Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3), as follows:

(a) Requires that a full adversary hearing be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an

extension under Subsection (a-3), unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved.

(a-1) Requires the court, before commencement of the full adversary hearing, to inform each parent not represented by an attorney of:

(1) the right to be represented by an attorney; and

(2) if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

(a-2) Requires the court to require a parent to complete and file with the court an affidavit of indigence if the parent claims indigence and requests the appointment of an attorney before the full adversary hearing. Authorizes the court to hear evidence to determine whether the parent is indigent. Requires the court to appoint an attorney to represent the parent if the court determines the parent is indigent.

(a-3) Authorizes the court, for good cause shown, to postpone the full adversary hearing for not more than seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. Authorizes the court to shorten or lengthen the extension granted under this subsection if the parent and the appointed attorney agree in writing. Requires the court to extend a temporary restraining order issued by the court for the protection of the child until the date of the rescheduled full adversary hearing if the court postpones the full adversary hearing.

SECTION 10. Amends Subchapter A, Chapter 263, Family Code, by adding Section 263.0061, as follows:

Sec. 263.0061. NOTICE TO PARENTS OF RIGHT TO COUNSEL. (a) Requires the court, at the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the date the court renders a temporary order appointing the Department of Family and Protective Services as temporary managing conservator of a child, to inform each parent not represented by an attorney of:

(1) the right to be represented by an attorney; and

(2) if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

(b) Requires the court to require a parent to complete and file with the court an affidavit of indigence if the parent claims indigence and requests the appointment of an attorney in a proceeding described by Subsection (a). Authorizes the court to hear evidence to determine whether the parent is indigent. Requires the court to appoint an attorney to represent the parent if the court determines the parent is indigent.

SECTION 11. Repealer: Section 107.013(c) (relating to requiring the court, in certain suits, to appoint an attorney ad litem to represent the interests of the indigent parent of the child who responds in opposition to the suit), Family Code.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2013.