

BILL ANALYSIS

S.B. 1759
By: Uresti
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, a court is required to appoint an attorney ad litem for certain parents opposing termination of the parent-child relationship. Interested parties assert that revisions to the law are necessary to extend this protection of parental rights to indigent parents in other types of suits affecting the parent-child relationship. In addition, the parties contend that changes need to be made to continuing legal education requirements for attorneys ad litem. S.B. 1759 seeks to address these issues by amending 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

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1759 amends the Family Code to require an attorney ad litem appointed for a child in a proceeding under provisions relating to the protection of a child in a suit affecting the parent-child relationship, rather than only in a proceeding in a suit filed by a governmental entity to protect the health and safety of the child or in a review of the placement of a child in the care of the Department of Family and Protective Services (DFPS), to complete certain continuing legal education and clarifies that the continuing legal education must relate to representing a child in a child protection case, rather than relate to child advocacy. The bill 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 provisions relating to the protection of a child in a suit affecting the parent-child relationship each year before the anniversary date of the attorney's listing.

S.B. 1759 requires the court to appoint an attorney ad litem to represent the interests of certain parents in a suit affecting the parent-child relationship filed by a governmental entity under provisions relating to the protection of a child in which the appointment of a conservator for a child is requested, in addition to such a suit in which termination of the parent-child relationship is requested. The bill clarifies that an attorney ad litem appointed to represent the interest of a parent in such suits is required to complete certain continuing legal education relating to representing parents in child protection cases, rather than relating to child protection law, and requires the continuing legal education, in addition to other criteria, to 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 provisions relating to the protection of a child in a suit affecting the parent-child relationship, rather than only in a proceeding in a suit filed by a governmental entity to protect the health and safety of the child or in a review of the placement of a child in DFPS care. The bill removes a requirement that the attorney ad litem be trained in child protection law or have experience determined by the court to be equivalent to that training. The bill repeals a provision requiring the court in a suit affecting the parent-child relationship filed by a

governmental entity requesting temporary managing conservatorship of a child to appoint an attorney ad litem to represent the interests of an indigent parent of the child who responds in opposition to the suit.

S.B. 1759 requires an attorney who is on the list maintained 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 provisions relating to the protection of a child in a suit affecting the parent-child relationship each year before the anniversary date of the attorney's listing. The bill requires the court to discharge an attorney who is appointed to represent the interests of an alleged father and who is unable to identify or locate the alleged father from the appointment on receipt of the attorney ad litem's written summary of the attorney's efforts to identify or locate the alleged father.

S.B. 1759 establishes that an attorney ad litem appointed in a suit affecting the parent-child relationship filed by a governmental entity under provisions relating to the protection of a child in which termination of the parent-child relationship or the appointment of a conservator for a child is requested 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 conduct an investigation regarding the petitioner's due diligence in locating the parent; 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 conduct an independent investigation to identify or locate the parent, as applicable. If the attorney ad litem identifies and locates the parent, the bill requires the attorney ad litem to provide to each party and the court the parent's name and address and any other available locating information, unless the court finds that disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury or the parent has been a victim of family violence, and, if appropriate, requires the attorney ad litem to assist the parent in making a claim of indigence for the appointment of an attorney. The bill authorizes the court, if the court makes such a finding relating to the disclosure of the parent's address, to order that the information not be disclosed or to render any other order the court considers necessary. The bill authorizes the court, if the court determines the parent is indigent, to appoint the attorney ad litem to continue to represent the parent. The bill requires an attorney ad litem, if the attorney ad litem is unable to identify or locate the parent, 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. The bill requires the court to discharge the attorney from the appointment on receipt of the summary.

S.B. 1759 requires a temporary restraining order or attachment of a child rendered by the court, in a suit brought by a governmental entity for an emergency order authorizing possession of a child, to contain a prominently displayed statement regarding a person's right to be represented by an attorney and sets out the required language of the statement.

S.B. 1759 requires the court, before commencement of the full adversary hearing in a suit by a governmental entity to protect the health and safety of a child, to inform each parent not represented by an attorney of the right to be represented by an attorney and, if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. The bill requires the court, if a parent claims indigence and requests the appointment of an attorney before the full adversary hearing, to require the parent to complete and file with the court an affidavit of indigence. The bill authorizes the court to hear evidence to determine whether the parent is indigent and, if the court determines the parent is indigent, requires the court to appoint an attorney to represent the parent. The bill 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. The bill authorizes the court to shorten or lengthen the extension if the parent and the appointed attorney agree in writing. The bill requires the court, if the court postpones the full adversary hearing, 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.

S.B. 1759 requires the court, at the status hearing and at each permanency hearing under a review of the placement of a child in DFPS care held after the date the court renders a temporary order appointing DFPS as temporary managing conservator of a child, to inform each parent not represented by an attorney of the right to be represented by an attorney and, if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. The bill requires the court, if a parent claims indigence and requests the appointment of an attorney in such a proceeding, to require the parent to complete and file with the court an affidavit of indigence. The bill authorizes the court to hear evidence to determine whether the parent is indigent and, if the court determines the parent is indigent, requires the court to appoint an attorney to represent the parent.

S.B. 1759 repeals Section 107.013(c), Family Code.

EFFECTIVE DATE

September 1, 2013.