

1-1 By: Uresti S.B. No. 1759  
1-2 (In the Senate - Filed March 8, 2013; March 25, 2013, read  
1-3 first time and referred to Committee on Jurisprudence;  
1-4 April 15, 2013, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 15, 2013,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

|      | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8  |     |     |        |     |
| 1-9  | X   |     |        |     |
| 1-10 | X   |     |        |     |
| 1-11 | X   |     |        |     |
| 1-12 |     |     | X      |     |
| 1-13 | X   |     |        |     |
| 1-14 | X   |     |        |     |
| 1-15 |     |     | X      |     |

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1759 By: Rodriguez

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to the procedures for the appointment of and the duties of  
1-20 attorneys ad litem in certain suits affecting the parent-child  
1-21 relationship.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 107.004, Family Code, is amended by  
1-24 amending Subsections (b) and (c) and adding Subsection (b-1) to  
1-25 read as follows:

1-26 (b) An attorney ad litem appointed for a child in a  
1-27 proceeding under Chapter 262 or 263 shall complete at least three  
1-28 hours of continuing legal education relating to representing  
1-29 children in child protection cases [~~advocacy~~] as described by  
1-30 Subsection (c) as soon as practicable after the attorney ad litem is  
1-31 appointed [~~litem's appointment~~]. An attorney ad litem is not  
1-32 required to comply with this subsection if the court finds that the  
1-33 attorney ad litem has experience equivalent to the required  
1-34 education.

1-35 (b-1) An attorney who is on the list maintained by the court  
1-36 as being qualified for appointment as an attorney ad litem for a  
1-37 child in a child protection case must complete at least three hours  
1-38 of continuing legal education relating to the representation of a  
1-39 child in a proceeding under Subtitle E each year before the  
1-40 anniversary date of the attorney's listing.

1-41 (c) The continuing legal education required by Subsections  
1-42 [~~Subsection~~] (b) and (b-1) must:

1-43 (1) be low-cost and available to persons throughout  
1-44 this state, including on the Internet provided through the State  
1-45 Bar of Texas; and

1-46 (2) focus on the duties of an attorney ad litem in, and  
1-47 the procedures of and best practices for, representing a child in a  
1-48 proceeding under Subtitle E [~~Chapter 262 or 263~~].

1-49 SECTION 2. Subsection (a), Section 107.013, Family Code, is  
1-50 amended to read as follows:

1-51 (a) In a suit filed by a governmental entity in which  
1-52 termination of the parent-child relationship or the appointment of  
1-53 a conservator for a child is requested, the court shall appoint an  
1-54 attorney ad litem to represent the interests of:

1-55 (1) an indigent parent of the child who responds in  
1-56 opposition to the termination or appointment;

1-57 (2) a parent served by citation by publication;

1-58 (3) an alleged father who failed to register with the  
1-59 registry under Chapter 160 and whose identity or location is  
1-60 unknown; and

2-1 (4) an alleged father who registered with the  
2-2 paternity registry under Chapter 160, but the petitioner's attempt  
2-3 to personally serve citation at the address provided to the  
2-4 registry and at any other address for the alleged father known by  
2-5 the petitioner has been unsuccessful.

2-6 SECTION 3. Section 107.0131, Family Code, is amended to  
2-7 read as follows:

2-8 Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR  
2-9 PARENT. (a) An attorney ad litem appointed under Section 107.013  
2-10 to represent the interests of a parent:

2-11 (1) shall:

2-12 (A) subject to Rules 4.02, 4.03, and 4.04, Texas  
2-13 Disciplinary Rules of Professional Conduct, and within a reasonable  
2-14 time after the appointment, interview:

2-15 (i) the parent, unless the parent's  
2-16 location is unknown;

2-17 (ii) each person who has significant  
2-18 knowledge of the case; and

2-19 (iii) the parties to the suit;

2-20 (B) investigate the facts of the case;

2-21 (C) to ensure competent representation at  
2-22 hearings, mediations, pretrial matters, and the trial on the  
2-23 merits:

2-24 (i) obtain and review copies of all court  
2-25 files in the suit during the attorney ad litem's course of  
2-26 representation; and

2-27 (ii) when necessary, conduct formal  
2-28 discovery under the Texas Rules of Civil Procedure or the discovery  
2-29 control plan;

2-30 (D) take any action consistent with the parent's  
2-31 interests that the attorney ad litem considers necessary to  
2-32 expedite the proceedings;

2-33 (E) encourage settlement and the use of  
2-34 alternative forms of dispute resolution;

2-35 (F) review and sign, or decline to sign, a  
2-36 proposed or agreed order affecting the parent;

2-37 (G) meet before each court hearing with the  
2-38 parent, unless the court:

2-39 (i) finds at that hearing that the attorney  
2-40 ad litem has shown good cause why the attorney ad litem's compliance  
2-41 is not feasible; or

2-42 (ii) on a showing of good cause, authorizes  
2-43 the attorney ad litem to comply by conferring with the parent, as  
2-44 appropriate, by telephone or video conference;

2-45 (H) abide by the parent's objectives for  
2-46 representation;

2-47 (I) become familiar with the American Bar  
2-48 Association's standards of practice for attorneys who represent  
2-49 parents in abuse and neglect cases; and

2-50 (J) ~~[(I)]~~ complete at least three hours of  
2-51 continuing legal education relating to representing parents in  
2-52 child protection cases ~~[law]~~ as described by Subsection (b) as soon  
2-53 as practicable after the attorney ad litem is appointed, unless the  
2-54 court finds that the attorney ad litem has experience equivalent to  
2-55 that education; and

2-56 ~~[(J) abide by the parent's objectives of~~  
2-57 ~~representation,]~~

2-58 (2) ~~[must be trained in child protection law or have~~  
2-59 ~~experience determined by the court to be equivalent to that~~  
2-60 ~~training; and~~

2-61 ~~[(3)]~~ is entitled to:

2-62 (A) request clarification from the court if the  
2-63 role of the attorney ad litem is ambiguous;

2-64 (B) request a hearing or trial on the merits;

2-65 (C) consent or refuse to consent to an interview  
2-66 of the parent by another attorney;

2-67 (D) receive a copy of each pleading or other  
2-68 paper filed with the court;

2-69 (E) receive notice of each hearing in the suit;

3-1 (F) participate in any case staffing conducted by  
3-2 the Department of Family and Protective Services in which the  
3-3 parent is invited to participate, including, as appropriate, a case  
3-4 staffing to develop a family plan of service, a family group  
3-5 conference, a permanency conference, a mediation, a case staffing  
3-6 to plan for the discharge and return of the child to the parent, and  
3-7 any other case staffing that the department determines would be  
3-8 appropriate for the parent to attend, but excluding any internal  
3-9 department staffing or staffing between the department and the  
3-10 department's legal representative; and

3-11 (G) attend all legal proceedings in the suit.

3-12 (b) The continuing legal education required by Subsection  
3-13 (a)(1)(J) [~~(a)(1)(I)~~] must:

3-14 (1) be low-cost and available to persons throughout  
3-15 this state, including on the Internet provided through the State  
3-16 Bar of Texas; and

3-17 (2) focus on the duties of an attorney ad litem in, and  
3-18 the procedures of and best practices for, representing a parent in a  
3-19 proceeding under Subtitle E [Chapter 262 or 263].

3-20 (c) An attorney who is on the list maintained by the court as  
3-21 being qualified for appointment as an attorney ad litem for a parent  
3-22 in a child protection case must complete at least three hours of  
3-23 continuing legal education relating to the representation of a  
3-24 parent in a proceeding under Subtitle E each year before the  
3-25 anniversary date of the attorney's listing.

3-26 SECTION 4. Subsections (a) and (d), Section 107.0132,  
3-27 Family Code, are amended to read as follows:

3-28 (a) Except as provided by Subsections (b) and (d), an [An]  
3-29 attorney ad litem appointed under Section 107.013 to represent the  
3-30 interests of an alleged father is only required to [shall]:

3-31 (1) conduct an investigation regarding the  
3-32 petitioner's due diligence in locating the alleged father,  
3-33 including by verifying that the petitioner has obtained a  
3-34 certificate of the results of a search of the paternity registry  
3-35 under Chapter 160;

3-36 (2) interview any party or other person who has  
3-37 significant knowledge of the case who may have information relating  
3-38 to the identity or location of the alleged father; and

3-39 (3) conduct an independent investigation to identify  
3-40 or locate the alleged father, as applicable.

3-41 (d) If the attorney ad litem is unable to identify or locate  
3-42 the alleged father, the attorney ad litem shall submit to the court  
3-43 a written summary of the attorney ad litem's efforts to identify or  
3-44 locate the alleged father with a statement that the attorney ad  
3-45 litem was unable to identify or locate the alleged father. On  
3-46 receipt of the summary required by this subsection, the court shall  
3-47 discharge the attorney from the appointment.

3-48 SECTION 5. Part 1, Subchapter B, Chapter 107, Family Code,  
3-49 is amended by adding Section 107.014 to read as follows:

3-50 Sec. 107.014. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR  
3-51 CERTAIN PARENTS. (a) Except as provided by Subsections (b) and  
3-52 (e), an attorney ad litem appointed under Section 107.013 to  
3-53 represent the interests of a parent whose identity or location is  
3-54 unknown or who has been served by citation by publication is only  
3-55 required to:

3-56 (1) conduct an investigation regarding the  
3-57 petitioner's due diligence in locating the parent;

3-58 (2) interview any party or other person who has  
3-59 significant knowledge of the case who may have information relating  
3-60 to the identity or location of the parent; and

3-61 (3) conduct an independent investigation to identify  
3-62 or locate the parent, as applicable.

3-63 (b) If the attorney ad litem identifies and locates the  
3-64 parent, the attorney ad litem shall:

3-65 (1) provide to each party and the court the parent's  
3-66 name and address and any other available locating information  
3-67 unless the court finds that:

3-68 (A) disclosure of a parent's address is likely to  
3-69 cause that parent harassment, serious harm, or injury; or

4-1 (B) the parent has been a victim of family  
4-2 violence; and  
4-3 (2) if appropriate, assist the parent in making a  
4-4 claim of indigence for the appointment of an attorney.

4-5 (c) If the court makes a finding described by Subsection  
4-6 (b)(1)(A) or (B), the court may:

4-7 (1) order that the information not be disclosed; or  
4-8 (2) render any other order the court considers  
4-9 necessary.

4-10 (d) If the court determines the parent is indigent, the  
4-11 court may appoint the attorney ad litem to continue to represent the  
4-12 parent under Section 107.013(a)(1).

4-13 (e) If the attorney ad litem is unable to identify or locate  
4-14 the parent, the attorney ad litem shall submit to the court a  
4-15 written summary of the attorney ad litem's efforts to identify or  
4-16 locate the parent with a statement that the attorney ad litem was  
4-17 unable to identify or locate the parent. On receipt of the summary  
4-18 required by this subsection, the court shall discharge the attorney  
4-19 from the appointment.

4-20 SECTION 6. Subsection (d), Section 262.1015, Family Code,  
4-21 is amended to read as follows:

4-22 (d) A temporary restraining order under this section  
4-23 expires not later than the 14th day after the date the order was  
4-24 rendered, unless the court grants an extension under Section  
4-25 262.201(a-3).

4-26 SECTION 7. Section 262.102, Family Code, is amended by  
4-27 adding Subsection (d) to read as follows:

4-28 (d) The temporary restraining order or attachment of a child  
4-29 rendered by the court must contain the following statement  
4-30 prominently displayed in boldface type, capital letters, or  
4-31 underlined:

4-32 "YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU  
4-33 ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO  
4-34 REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT  
4-35 [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE  
4-36 SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY,  
4-37 THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE  
4-38 COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE  
4-39 COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF  
4-40 AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

4-41 SECTION 8. Section 262.103, Family Code, is amended to read  
4-42 as follows:

4-43 Sec. 262.103. DURATION OF TEMPORARY RESTRAINING ORDER AND  
4-44 ATTACHMENT. A temporary restraining order or attachment of the  
4-45 child issued under this chapter expires not later than 14 days after  
4-46 the date it is issued unless it is extended as provided by the Texas  
4-47 Rules of Civil Procedure or Section 262.201(a-3).

4-48 SECTION 9. Section 262.201, Family Code, is amended by  
4-49 amending Subsection (a) and adding Subsections (a-1), (a-2), and  
4-50 (a-3) to read as follows:

4-51 (a) Unless the child has already been returned to the  
4-52 parent, managing conservator, possessory conservator, guardian,  
4-53 caretaker, or custodian entitled to possession and the temporary  
4-54 order, if any, has been dissolved, a full adversary hearing shall be  
4-55 held not later than the 14th day after the date the child was taken  
4-56 into possession by the governmental entity, unless the court grants  
4-57 an extension under Subsection (a-3).

4-58 (a-1) Before commencement of the full adversary hearing,  
4-59 the court must inform each parent not represented by an attorney of:

4-60 (1) the right to be represented by an attorney; and  
4-61 (2) if a parent is indigent and appears in opposition  
4-62 to the suit, the right to a court-appointed attorney.

4-63 (a-2) If a parent claims indigence and requests the  
4-64 appointment of an attorney before the full adversary hearing, the  
4-65 court shall require the parent to complete and file with the court  
4-66 an affidavit of indigence. The court may hear evidence to determine  
4-67 whether the parent is indigent. If the court determines the parent  
4-68 is indigent, the court shall appoint an attorney to represent the  
4-69 parent.

5-1           (a-3) The court may, for good cause shown, postpone the full  
5-2 adversary hearing for not more than seven days from the date of the  
5-3 attorney's appointment to provide the attorney time to respond to  
5-4 the petition and prepare for the hearing. The court may shorten or  
5-5 lengthen the extension granted under this subsection if the parent  
5-6 and the appointed attorney agree in writing. If the court postpones  
5-7 the full adversary hearing, the court shall extend a temporary  
5-8 restraining order issued by the court for the protection of the  
5-9 child until the date of the rescheduled full adversary hearing.

5-10           SECTION 10. Subchapter A, Chapter 263, Family Code, is  
5-11 amended by adding Section 263.0061 to read as follows:

5-12           Sec. 263.0061. NOTICE TO PARENTS OF RIGHT TO COUNSEL.

5-13           (a) At the status hearing under Subchapter C and at each  
5-14 permanency hearing under Subchapter D held after the date the court  
5-15 renders a temporary order appointing the department as temporary  
5-16 managing conservator of a child, the court shall inform each parent  
5-17 not represented by an attorney of:

5-18                     (1) the right to be represented by an attorney; and

5-19                     (2) if a parent is indigent and appears in opposition  
5-20 to the suit, the right to a court-appointed attorney.

5-21           (b) If a parent claims indigence and requests the  
5-22 appointment of an attorney in a proceeding described by Subsection  
5-23 (a), the court shall require the parent to complete and file with  
5-24 the court an affidavit of indigence. The court may hear evidence to  
5-25 determine whether the parent is indigent. If the court determines  
5-26 the parent is indigent, the court shall appoint an attorney to  
5-27 represent the parent.

5-28           SECTION 11. Subsection (c), Section 107.013, Family Code,  
5-29 is repealed.

5-30           SECTION 12. The changes in law made by this Act apply only  
5-31 to a suit affecting the parent-child relationship filed on or after  
5-32 the effective date of this Act. A suit affecting the parent-child  
5-33 relationship filed before that date is governed by the law in effect  
5-34 on the date the suit was filed, and that law is continued in effect  
5-35 for that purpose.

5-36           SECTION 13. This Act takes effect September 1, 2013.

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