

BILL ANALYSIS

H.B. 2723
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Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Unlike a traditional adversarial proceeding, a child protection case typically involves a series of statutorily required hearings and often requires a concerted, collaborative effort between parties to the suit and other professionals. Both children and parents rely on their attorneys to guide them through this complex system and advocate for their interests. Attorneys handling child protection cases must be familiar with numerous statutory requirements set out in the Family Code, as well as able to assist clients dealing with the loss of the children, substance abuse, family violence, poverty, and ailing mental and physical health. In order to provide the best legal representation possible and attain the best outcome for the child and family, the attorney must be involved in the case from the beginning. H.B. 2723 seeks to ensure that the parties to a child protection suit have access to the services of an attorney.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

H.B. 2723 amends the Family Code to require the court in a child protection suit in which termination of the parent-child relationship or the appointment of a conservator for a child is requested, to inform a parent not represented by an attorney at the parent's first appearance in court of the right to be represented by an attorney and, if the parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney ad litem. The bill includes among the conditions under which a court is authorized to appoint an attorney ad litem to represent the interests of both parents of the child a finding that there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties. The bill requires the court to require a parent who claims indigence to file an affidavit of indigence before the court is authorized to conduct a hearing to determine the parent's indigence. The bill authorizes the court to consider additional evidence at the hearing to determine indigence, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. The bill requires the court, if it determines the parent is indigent, to appoint an attorney ad litem to represent the parent.

H.B. 2723 authorizes a court to appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at the time the court issues a temporary restraining order or

attachment of the parent's child in a child protection suit and ending on the court's determination of whether the parent is indigent before commencement of the full adversary hearing. The bill establishes that the powers and duties of an attorney ad litem appointed to represent such a parent are the same as those under statutory provisions relating to the power and duties of an attorney ad litem appointed for a parent and, if applicable, that the attorney ad litem is required to conduct an investigation regarding the petitioner's due diligence in locating and serving citation on the parent and to interview any party or other person who may have information relating to the identity or location of the parent.

H.B. 2723 requires the attorney ad litem, if the attorney ad litem identifies and locates the parent, to inform the parent of the parent's right to be represented by an attorney and of the parent's right to a court-appointed attorney ad litem, if the parent is indigent and appears in opposition to the suit; to assist the parent in making a claim of indigence for the appointment of an attorney ad litem if the parent claims indigence and requests an attorney ad litem beyond the period of the temporary appointment; and to assist the parent in preparing for the full adversary hearing. The bill authorizes the court to appoint the attorney ad litem to continue to represent the parent if the court determines the parent is indigent.

H.B. 2723 requires an attorney ad litem who 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 ad litem from the appointment on receipt of the summary. The bill requires the court to discharge the attorney ad litem from the appointment if the attorney ad litem identifies or locates the parent and the court determines that the parent is not indigent.

EFFECTIVE DATE

September 1, 2015.