

BILL ANALYSIS

C.S.S.B. 1369
By: Zaffirini
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties explain that courts often appoint an attorney ad litem, guardian, or guardian ad litem to represent or act on behalf of a person who is deemed unable to represent himself or herself, such as a minor, an elderly person, or a person with a disability, and also appoint mediators and competency evaluators in many cases. The parties report that around two decades ago, a task force found evidence that some state judges abused their discretionary authority by using appointment income to reward campaign supporters, and the parties contend that the task force findings remain relevant because no significant structural reforms have been made to the ad litem appointment system since then. The parties also contend that there is a low compliance rate for an existing Texas Supreme Court order requiring compensation data for judicial appointments to be reported and that this lack of compliance hampers any investigation into improper activities. In addition to making sure that this information gets reported, the interested parties suggest that the state should study the feasibility of establishing a statewide uniform attorney ad litem billing system. C.S.S.B. 1369 seeks to address these issues.

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 rulemaking authority is expressly granted to the Texas Judicial Council in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 1369 amends the Government Code to require the clerk of each court in Texas created by the Texas Constitution, by statute, or as authorized by statute to prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case before the court in the preceding month. The bill requires the clerk of a court that does not make an appointment in the preceding month to file a report indicating that no appointment was made by the court in that month. The bill requires the report on court appointments to include the name of each person appointed by the court for a case in that month; the name of the judge and the date of the order approving compensation to be paid to a person appointed for a case in that month; the number and style of each case in which a person was appointed for that month; the number of cases for which each person was appointed by the court in that month; the total amount of compensation paid to each person appointed by the court in that month and the source of the compensation; and, if the total amount of compensation paid to a person appointed to serve for one appointed case in that month exceeds \$1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses.

C.S.S.B. 1369 makes the reporting requirements inapplicable to a mediation conducted by an alternative dispute resolution system established by a county; an appointment made in a case involving a minor seeking an abortion without notification of a parent, managing conservator, or guardian; a guardian ad litem or other person appointed under a program authorized by Family Code provisions regarding the appointment of volunteer advocates; or an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a county domestic relations office that serves families, county departments, and courts in matters relating to the parent-child relationship.

C.S.S.B. 1369 requires the clerk of a court, not later than the 15th day of each month, to submit a copy of the report to the Office of Court Administration of the Texas Judicial System and to post the report at the courthouse of the county in which the court is located and on any website of the court. The bill requires the Office of Court Administration to prescribe the format that courts and the clerks of the courts must use to report the required information and requires the office to post the collected information on the office's website. The bill makes a court that fails to provide to the clerk of the court the information required for the submitted report ineligible for any grant money awarded by the state or a state agency for the next state fiscal biennium. The bill requires the Texas Judicial Council, as the council considers appropriate, to adopt rules to implement the bill's provisions regarding judicial reports and specifies that those bill provisions control to the extent of a conflict with a specific provision relating to a court. The bill's provisions relating to judicial reports apply beginning with the state fiscal year that begins September 1, 2016.

C.S.S.B. 1369 requires the Office of Court Administration to conduct a study on the feasibility of establishing a statewide uniform attorney ad litem billing system that would allow attorneys appointed by courts in Texas to serve as attorneys ad litem in cases before the courts to enter on a standardized form information regarding the appointment type and duration, case information and activities, numbers of hours served under the appointment, and hourly rate or flat fee paid for the appointment. The bill requires the study to examine the possible benefits to Texas and to Texas counties of establishing a statewide uniform attorney ad litem billing system; the number of attorneys in Texas providing legal representation in court-appointed matters; the number of hours spent in client representation activities by attorneys serving as attorneys ad litem; the qualifications of attorneys serving as attorneys ad litem; whether using a standardized billing voucher would provide uniformity in the types of vouchers attorneys are currently required to submit to courts for payment; and the amount of money spent on court-appointed legal representation by year, court, county, and person served, such as parent, child, or other. The bill requires the Office of Court Administration, not later than December 31, 2016, to submit an electronic copy of the study to the governor, lieutenant governor, and speaker of the house of representatives. The bill's provisions relating to the study expire September 1, 2017.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1369 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subtitle B, Title 2, Government Code, is amended by adding Chapter 36 to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle B, Title 2, Government Code, is amended by adding Chapter 36 to read as follows:

CHAPTER 36. JUDICIAL REPORTS

Sec. 36.001. DEFINITIONS. In this section:

(1) "Competency evaluator" means a physician or psychologist who is licensed or certified in this state and who performs examinations to determine whether an individual is incapacitated or has an intellectual disability for purposes of appointing a guardian for the individual. The term includes physicians and psychologists conducting examinations under Sections 1101.103 and 1101.104, Estates Code.

(2) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

Sec. 36.002. APPLICABILITY; CONFLICT OF LAW.

Sec. 36.003. EXEMPTION. The reporting requirements of Section 36.004 do not apply to:

(1) a mediator appointed under Chapter 152, Civil Practice and Remedies Code;

(2) an appointment made under Chapter 33, Family Code;

(3) a guardian ad litem or other person appointed under Section 107.031, Family Code; or

(4) an attorney ad litem, guardian ad litem, or mediator appointed to represent a child as authorized under Chapter 203, Family Code.

Sec. 36.004. REPORT ON APPOINTMENTS. (a) In addition to a report required by other state law or rule, each court in this state shall prepare a report on court appointments for each state fiscal year. A court that does not make an appointment in the preceding state fiscal year must file a report indicating that no appointment was made in that year. A court that appoints an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case before the court in the preceding state fiscal year shall include in the report:

(1) the name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that year;

(2) the name of the judge and the date of

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(2) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

Sec. 36.002. APPLICABILITY; CONFLICT OF LAW.

Sec. 36.003. EXEMPTION. The reporting requirements of Section 36.004 do not apply to:

(1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code;

(2) an appointment made under Chapter 33, Family Code;

(3) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code; or

(4) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code.

Sec. 36.004. REPORT ON APPOINTMENTS. (a) In addition to a report required by other state law or rule, the clerk of each court in this state shall prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case before the court in the preceding month. For a court that does not make an appointment in the preceding month, the clerk of the court must file a report indicating that no appointment was made by the court in that month. The report on court appointments must include:

(1) the name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;

(2) the name of the judge and the date of

the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that year:

(3) the number and style of each case in which a person was appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for that year:

(4) the number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator in that year:

(5) if available, the number of hours and the hourly rate, flat fee, or pro bono hours of credit for each person who served as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for an appointed case in that year; and

(6) the total amount of compensation paid to each attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator appointed by the court in that year and the source of the compensation.

(b) A court shall, not later than November 1 of each year, prepare the report required under Subsection (a), submit a copy of the report to the Office of Court Administration of the Texas Judicial System, and post the report at the courthouse of the county in which the court is located and on any Internet website of the court.

(c) The Office of Court Administration of the Texas Judicial System shall prescribe the format that courts must use to report the information required by this section and shall post the information collected under Subsection (b) on the office's Internet website.

Sec. 36.005. FAILURE TO REPORT. If a

the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month:

(3) the number and style of each case in which a person was appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for that month:

(4) the number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator in that month:

(5) the total amount of compensation paid to each attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator appointed by the court in that month and the source of the compensation; and

(6) if the total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for one appointed case in that month exceeds \$1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses.

(b) Not later than the 15th day of each month, the clerk of a court shall:

(1) submit a copy of the report to the Office of Court Administration of the Texas Judicial System; and

(2) post the report at the courthouse of the county in which the court is located and on any Internet website of the court.

(c) The Office of Court Administration of the Texas Judicial System shall prescribe the format that courts and the clerks of the courts must use to report the information required by this section and shall post the information collected under Subsection (b) on the office's Internet website.

Sec. 36.005. FAILURE TO REPORT. If a

court in this state fails to submit a report required by Section 36.004, the court is ineligible for any grant money awarded by this state or a state agency for the next state fiscal biennium.

Sec. 36.006. TEXAS JUDICIAL COUNCIL RULES.

SECTION 2. (a) The Office of Court Administration of the Texas Judicial System shall conduct a study on the feasibility of establishing a statewide uniform attorney ad litem billing system that would allow attorneys appointed by courts in this state to serve as attorneys ad litem in cases before the courts to enter on a standardized form information regarding the appointment type and duration, case information and activities, numbers of hours served under the appointment, and hourly rate or flat fee paid for the appointment.

(b) The study conducted under this section shall examine:

(1) the possible benefits to this state and to counties in this state of establishing a statewide uniform attorney ad litem billing system;

(2) the number of attorneys in this state providing legal representation in court-appointed matters;

(3) the number of hours spent in client representation activities by attorneys serving as attorneys ad litem;

(4) the qualifications of attorneys serving as attorneys ad litem, including training and specialization;

(5) whether using a standardized billing voucher would provide uniformity in the types of vouchers attorneys are currently required to submit to courts for payment; and

(6) the amount of money spent on court-appointed legal representation by year, court, county, and person served, such as parent, child, or other.

(c) Not later than December 31, 2016, the Office of Court Administration of the Texas Judicial System shall submit an electronic copy of the study conducted under this section to the governor, lieutenant governor, and speaker of the house of representatives.

(d) This section expires September 1, 2017.

court in this state fails to provide to the clerk of the court the information required for the report submitted under Section 36.004, the court is ineligible for any grant money awarded by this state or a state agency for the next state fiscal biennium.

Sec. 36.006. TEXAS JUDICIAL COUNCIL RULES.

SECTION 2. Same as engrossed version.

SECTION 3. Chapter 36, Government Code, as added by this Act, applies beginning with the state fiscal year that begins September 1, 2016.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.