

By: Thompson of Harris

H.B. No. 3003

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of counsel in certain suits affecting the parent-child relationship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 107, Family Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. OFFICE OF FAMILY REPRESENTATION

Sec. 107.061. DEFINITIONS. In this subchapter:

(1) "Governmental entity" includes a county, a group of counties, a department of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

(2) "Office" means an office of family representation created under this subchapter.

Sec. 107.062. APPLICABILITY. This subchapter applies to a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child in which appointment of an attorney is required under Section 107.012 or 107.013.

Sec. 107.063. NONPROFIT FUNDING. This subchapter does not limit or prevent a nonprofit corporation from receiving and using money obtained from other entities to provide legal representation and services as authorized by this subchapter.

1       Sec. 107.064. OFFICE OF FAMILY REPRESENTATION. (a) An  
2 office of family representation is an entity that uses public money  
3 to provide legal representation and services for a child or parent  
4 in a suit filed by a governmental entity seeking termination of the  
5 parent-child relationship or the appointment of a conservator for  
6 the child in which appointment is mandatory for a child under  
7 Section 107.012 or for a parent under Section 107.013.

8       (b) An office may be a governmental entity or a nonprofit  
9 corporation operating under a written agreement with a governmental  
10 entity, other than an individual judge or court.

11       Sec. 107.065. CREATION OF OFFICE OF FAMILY REPRESENTATION.

12 (a) The commissioners court of any county, on written approval of a  
13 judge of a statutory county court or a district court having family  
14 law jurisdiction in the county, may create an office of family  
15 representation by establishing a department of the county or  
16 designating under a contract a nonprofit corporation to perform the  
17 duties of an office.

18       (b) The commissioners courts of two or more counties may  
19 enter into a written agreement to jointly create and jointly fund a  
20 regional office.

21       (c) In creating an office under this section, the  
22 commissioners court shall specify or the commissioners courts shall  
23 jointly specify, as applicable:

24           (1) the duties of the office;

25           (2) the types of cases to which the office may be  
26 appointed under this chapter and the courts in which an attorney  
27 employed by the office may be required to appear;

1           (3) if the office is a nonprofit corporation, the term  
2 during which the contract designating the office is effective and  
3 how that contract may be renewed on expiration of the term; and

4           (4) if an oversight board is established under Section  
5 107.071 for the office, the powers and duties that have been  
6 delegated to the oversight board.

7           Sec. 107.066. NONPROFIT AS OFFICE. (a) Before contracting  
8 with a nonprofit corporation to serve as an office, the  
9 commissioners court or commissioners courts, as applicable, must  
10 solicit proposals for the office.

11           (b) After considering each proposal for an office submitted  
12 by a nonprofit corporation, the commissioners court or  
13 commissioners courts, as applicable, shall select a proposal that  
14 reasonably demonstrates that the office will provide adequate  
15 quality representation for children and parents for whom appointed  
16 counsel is required under Section 107.012 or 107.013.

17           (c) The total cost of the proposal may not be the sole  
18 consideration in selecting a proposal.

19           Sec. 107.067. PLAN OF OPERATION FOR OFFICE. The applicable  
20 commissioners court or commissioners courts shall require a written  
21 plan of operation from an entity serving as an office. The plan must  
22 include:

23           (1) a budget for the office, including salaries;

24           (2) a description of each personnel position,  
25 including the chief counsel position;

26           (3) the maximum allowable caseloads for each attorney  
27 employed by the office;

1           (4) provisions for training personnel and attorneys  
2 employed by the office;

3           (5) a description of anticipated overhead costs for  
4 the office;

5           (6) policies regarding the use of licensed  
6 investigators and expert witnesses by the office; and

7           (7) a policy to ensure that the chief of the office and  
8 other attorneys employed by the office do not provide  
9 representation to a child, a parent, or an alleged father if doing  
10 so would create a conflict of interest that has not been waived by  
11 the client.

12           Sec. 107.068. OFFICE PERSONNEL. (a) An office must be  
13 directed by a chief counsel who:

14                   (1) is a member of the State Bar of Texas;

15                   (2) has practiced law for at least three years; and

16                   (3) has substantial experience in the practice of  
17 child welfare law.

18           (b) An office may employ attorneys, licensed investigators,  
19 licensed social workers, and other personnel necessary to perform  
20 the duties of the office as specified by the commissioners court or  
21 commissioners courts.

22           (c) An attorney for the office must comply with any  
23 applicable continuing education and training requirements of  
24 Sections 107.004 and 107.0131 before accepting representation.

25           (d) Except as authorized by this chapter, the chief counsel  
26 and other attorneys employed by an office may not:

27                   (1) engage in the private practice of child welfare

1 law; or

2 (2) accept anything of value not authorized by this  
3 chapter for services rendered under this chapter.

4 (e) A judge may remove from a case a person who violates  
5 Subsection (d).

6 Sec. 107.069. APPOINTMENTS IN COUNTY IN WHICH OFFICE  
7 CREATED. (a) If there is an office serving a county, a court in that  
8 county shall appoint an attorney from the office in a suit filed in  
9 the county by a governmental entity seeking termination of the  
10 parent-child relationship or the appointment of a conservator for  
11 the child, unless there is a conflict of interest or other reason to  
12 appoint a different attorney from the list maintained by the court  
13 of attorneys qualified for appointment under Section [107.012](#) or  
14 [107.013](#).

15 (b) An office may not accept an appointment if:

16 (1) a conflict of interest exists;

17 (2) the office has insufficient resources to provide  
18 adequate representation;

19 (3) the office is incapable of providing  
20 representation in accordance with the rules of professional  
21 conduct; or

22 (4) the office shows other good cause for not  
23 accepting the appointment.

24 (c) An office may investigate the financial condition of any  
25 person the office is appointed to represent under Section [107.013](#).

26 The office shall report the results of the investigation to the  
27 appointing judge. The judge may hold a hearing to determine if the

1 person is indigent and entitled to appointment of representation  
2 under Section 107.013.

3 (d) If it is necessary to appoint an attorney who is not  
4 employed by an office for one or more parties, the attorney is  
5 entitled to the compensation provided by Section 107.015.

6 Sec. 107.070. FUNDING OF OFFICE. (a) An office is entitled  
7 to receive money for personnel costs and expenses incurred in  
8 operating as an office in amounts set by the commissioners court and  
9 paid out of the appropriate county fund, or jointly fixed by the  
10 commissioners courts and proportionately paid out of each  
11 appropriate county fund if the office serves more than one county.

12 (b) Any fees ordered by the court under Section 107.015 to  
13 be paid by a party shall be paid to the office and used for attorney  
14 salaries and other administrative costs.

15 Sec. 107.071. OVERSIGHT BOARD. (a) The commissioners court  
16 of a county or the commissioners courts of two or more counties may  
17 establish an oversight board for an office created in accordance  
18 with this subchapter.

19 (b) A commissioners court that establishes an oversight  
20 board under this section shall appoint members of the board.  
21 Members may include one or more of the following:

22 (1) an attorney with substantial experience in child  
23 welfare law;

24 (2) the judge of a trial court having family law  
25 jurisdiction in the county or counties for which the office was  
26 created;

27 (3) a county commissioner; and

1           (4) a county judge.

2           (c) A commissioners court may delegate to the oversight  
3 board any power or duty of the commissioners court to provide  
4 oversight of the office under this subchapter, including:

5           (1) recommending selection and removal of a chief  
6 counsel of the office;

7           (2) setting policy for the office; and

8           (3) developing a budget proposal for the office.

9           (d) An oversight board established under this section may  
10 not access privileged or confidential information.

11           SUBCHAPTER F. MANAGED ASSIGNED COUNSEL PROGRAM

12           Sec. 107.101. DEFINITIONS. In this subchapter:

13           (1) "Governmental entity" includes a county, a group  
14 of counties, a department of a county, an administrative judicial  
15 region created by Section 74.042, Government Code, and any entity  
16 created under the Interlocal Cooperation Act as permitted by  
17 Chapter 791, Government Code.

18           (2) "Program" means a managed assigned counsel program  
19 created under this subchapter.

20           Sec. 107.102. MANAGED ASSIGNED COUNSEL PROGRAM. (a) A  
21 managed assigned counsel program may be operated with public money  
22 for the purpose of appointing counsel to provide legal  
23 representation and services for a child or parent in a suit filed by  
24 a governmental entity seeking termination of the parent-child  
25 relationship or the appointment of a conservator for the child in  
26 which appointment is mandatory for a child under Section 107.012 or  
27 for a parent under Section 107.013.

1       (b) The program may be operated by a governmental entity,  
2 nonprofit corporation, or local bar association under a written  
3 agreement with a governmental entity, other than an individual  
4 judge or court.

5       Sec. 107.103. CREATION OF MANAGED ASSIGNED COUNSEL PROGRAM.

6       (a) The commissioners court of a county, on written approval of a  
7 judge of a statutory county court or a district court having family  
8 law jurisdiction in the county, may appoint a governmental entity,  
9 nonprofit corporation, or local bar association to operate a  
10 managed assigned counsel program.

11       (b) The commissioners courts of two or more counties may  
12 enter into a written agreement to jointly appoint and fund a  
13 governmental entity, nonprofit corporation, or bar association to  
14 operate a program.

15       (c) In appointing an entity to operate a program under this  
16 section, the commissioners court shall specify or the commissioners  
17 courts shall jointly specify:

18               (1) the types of cases in which the program may appoint  
19 counsel under this section, and the courts in which the counsel  
20 appointed by the program may be required to appear; and

21               (2) the term of any agreement establishing a program  
22 and how the agreement may be terminated or renewed.

23       Sec. 107.104. PLAN FOR PROGRAM REQUIRED. The commissioners  
24 court or commissioners courts shall require a written plan of  
25 operation from an entity operating a program under this section.  
26 The plan of operation must include:

27               (1) a budget for the program, including salaries;

1           (2) a description of each personnel position,  
2 including the program's director;

3           (3) the maximum allowable caseload for each attorney  
4 appointed under the program;

5           (4) provisions for training personnel of the program  
6 and attorneys appointed under the program;

7           (5) a description of anticipated overhead costs for  
8 the program;

9           (6) a policy regarding licensed investigators and  
10 expert witnesses used by attorneys appointed under the program;

11           (7) a policy to ensure that appointments are  
12 reasonably and impartially allocated among qualified attorneys;  
13 and

14           (8) a policy to ensure that an attorney appointed  
15 under the program does not accept appointment in a case that  
16 involves a conflict of interest for the attorney.

17           Sec. 107.105. PROGRAM DIRECTOR; PERSONNEL. (a) Unless a  
18 program uses a review committee appointed under Section 107.106, a  
19 program under this section must be directed by a person who:

20           (1) is a member of the State Bar of Texas;

21           (2) has practiced law for at least three years; and

22           (3) has substantial experience in the practice of  
23 child welfare law.

24           (b) A program may employ personnel necessary to perform the  
25 duties of the program and enter into contracts necessary to perform  
26 the program's duties as specified by the commissioners court or  
27 commissioners courts under this section.

1       Sec. 107.106. REVIEW COMMITTEE. (a) The governmental  
2 entity, nonprofit corporation, or local bar association operating a  
3 program may appoint a review committee of three or more individuals  
4 to approve attorneys for inclusion on the program's public  
5 appointment list.

6       (b) Each member of the committee:

7           (1) must meet the requirements described by Section  
8 107.105(a) for the program director;

9           (2) may not be employed as a prosecutor; and

10          (3) may not be included on or apply for inclusion on  
11 the public appointment list.

12       Sec. 107.107. APPOINTMENT FROM PROGRAM'S PUBLIC APPOINTMENT  
13 LIST. (a) The judge of a county served by a program shall make any  
14 appointment required under Section 107.012 or 107.013 in a suit  
15 filed in the county by a governmental entity seeking termination of  
16 the parent-child relationship or the appointment of a conservator  
17 for the child from the program's public appointment list.

18       (b) The program's public appointment list from which an  
19 attorney is appointed under this section must contain the names of  
20 qualified attorneys, each of whom:

21           (1) applies to be included on the list;

22           (2) meets any applicable requirements, including any  
23 education and training programs required under Sections 107.004 and  
24 107.0131; and

25           (3) is approved by the program director or review  
26 committee, as applicable.

27       Sec. 107.108. FUNDING OF PROGRAM. (a) A program is entitled

1 to receive money for personnel costs and expenses incurred in  
2 amounts set by the commissioners court and paid out of the  
3 appropriate county fund or jointly fixed by the commissioners  
4 courts and proportionately paid out of each appropriate county fund  
5 if the program serves more than one county.

6 (b) An attorney appointed under the program is entitled to  
7 reasonable fees as provided by Section [107.015](#).

8 SECTION 2. This Act takes effect September 1, 2015.