

BILL ANALYSIS

C.S.H.B. 3109
By: Giddings
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that an attorney ad litem is often an important advocate for a child during the pendency of a child protective services case but note that the duration of appointment of an attorney ad litem is inconsistent across the state. C.S.H.B. 3109 seeks to ensure that a child for whom the Department of Family and Protective Services (DFPS) is appointed as managing conservator continues to have an attorney ad litem for as long as the child remains in the conservatorship of DFPS, with certain exceptions.

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

C.S.H.B. 3109 amends the Family Code to specify that the time period for which a court order appointing the Department of Family and Protective Services (DFPS) as a child's managing conservator may provide for the continuation of the appointment of the guardian ad litem for the child is any period during the time the child remains in the conservatorship of DFPS, as set by the court. The bill replaces an authorization for a court order appointing DFPS as a child's managing conservator to provide for the continuation of the appointment of the attorney ad litem for the child with a requirement that such an order provide for that continuation and specifies that the duration of that continuation is required to be as long as the child remains in the conservatorship of DFPS, subject to the bill's provisions.

C.S.H.B. 3109 authorizes the court to discharge the attorney ad litem appointed for a child on the entry of a final order terminating the parent-child relationship and naming DFPS as the child's managing conservator on finding that the child has a representative authorized by the court to represent the legal interests of the child and discharge of the attorney ad litem is in the child's best interest or if the court finds that the child resides in the home identified in the child's permanency plan as the child's permanent home, has an attorney ad litem or guardian ad litem who does not object to the child's permanency plan, and has resided in such home for at least three months. The bill requires a court that renders an order discharging a child's attorney ad litem, at each permanency hearing following the final order naming DFPS as the child's managing conservator, to make the findings a court is required by law to make at such a permanency hearing.

C.S.H.B. 3109 requires a court at each permanency hearing held after the court renders a final

order naming DFPS the managing conservator of a child who is not represented by an attorney ad litem to determine whether the child requires representation by an attorney ad litem and, if the court declines to appoint an attorney ad litem for the child, to state the reason for declining to appoint an attorney ad litem. The bill requires a court at such a hearing for a child who is represented by an attorney ad litem to consider the need for continued appointment of the attorney ad litem for the child and authorizes the court to discharge the attorney ad litem appointed for the child if the court finds that the child is eligible for adoption and living in the home identified in the permanency plan as the child's permanent home, the child's attorney ad litem or guardian ad litem does not object to the child's permanency plan, and the child has resided in such home for at least three months.

C.S.H.B. 3109 applies to a suit affecting the parent-child relationship filed before, on, or after the bill's effective date.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3109 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 107.016, Family Code, is amended to read as follows:

Sec. 107.016. CONTINUED REPRESENTATION; DURATION OF APPOINTMENT. In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as conservator of the child is requested:

(1) an order appointing the Department of Family and Protective Services as the child's temporary managing conservator may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any period set by the court; ~~and~~

(2) an order appointing the Department of Family and Protective Services as the child's permanent managing conservator shall provide for the continuation of the appointment of the attorney ad litem for the child as long as the child remains in the conservatorship of the department; and

(3) an attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 107.016, Family Code, is amended to read as follows:

Sec. 107.016. CONTINUED REPRESENTATION; DURATION OF APPOINTMENT. In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as conservator of the child is requested:

(1) an order appointing the Department of Family and Protective Services as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem ~~[or attorney ad litem]~~ for the child for any period during the time the child remains in the conservatorship of the department, as set by the court; ~~and~~

(2) subject to Section 263.4042, an order appointing the Department of Family and Protective Services as the child's managing conservator shall provide for the continuation of the appointment of the attorney ad litem for the child as long as the child remains in the conservatorship of the department; and

(3) an attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

- (A) the date the suit affecting the parent-child relationship is dismissed;
- (B) the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or
- (C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

No equivalent provision.

- (A) the date the suit affecting the parent-child relationship is dismissed;
- (B) the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or
- (C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

SECTION 2. Subchapter E, Chapter 263, Family Code, is amended by adding Section 263.4042 to read as follows:

Sec. 263.4042. CONTINUED

APPOINTMENT OF ATTORNEY AD LITEM AFTER FINAL ORDER. (a) On the entry of a final order terminating the parent-child relationship and naming the Department of Family and Protective Services as the child's managing conservator, the court may discharge the attorney ad litem appointed for the child if the court finds that:

(1) the child has a representative authorized by the court to represent the legal interests of the child and discharge of the attorney ad litem is in the child's best interest; or

(2) the child:

(A) resides in the home identified in the child's permanency plan as the child's permanent home;

(B) has an attorney ad litem or guardian ad litem who does not object to the child's permanency plan; and

(C) has resided in the home described by Paragraph (A) for at least three months.

(b) If a court renders an order discharging a child's attorney ad litem under Subsection (a), at each permanency hearing following the final order held under Section 263.501, the court shall make the findings required by Section 263.5031.

No equivalent provision.

SECTION 3. Section 263.5031, Family Code, is amended to read as follows:

Sec. 263.5031. PERMANENCY

HEARINGS FOLLOWING FINAL ORDER. (a) At each permanency hearing after the court renders a final order, the court shall:

(1) identify all persons and parties present at the hearing;

(2) review the efforts of the department or other agency in notifying persons entitled to

notice under Section 263.0021; and

(3) review the permanency progress report to determine:

(A) the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;

(B) the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;

(C) if the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive environment consistent with the child's best interest and special needs;

(D) the appropriateness of the primary and alternative permanency goals for the child, whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:

(i) the department has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or

(ii) another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;

(E) for a child whose permanency goal is another planned permanent living arrangement:

(i) the desired permanency outcome for the child, by asking the child; and

(ii) whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:

(a) return home;

(b) be placed for adoption;

(c) be placed with a legal guardian; or

(d) be placed with a fit and willing relative;

(F) if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community;

(G) whether the child is receiving

appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;

(H) for a child receiving psychotropic medication, whether the child:

(i) has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child's needs; or

(ii) has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;

(I) whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events;

(J) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, whether to order the department to provide services to a parent for not more than six months after the date of the permanency hearing if:

(i) the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and

(ii) the court determines that further efforts at reunification with a parent are:

(a) in the best interest of the child; and

(b) likely to result in the child's safe return to the child's parent; and

(K) whether the department has identified a family or other caring adult who has made a permanent commitment to the child.

(b) At each permanency hearing after the court renders a final order, the court:

(1) for a child who is not represented by an attorney ad litem shall:

(A) determine whether the child requires representation by an attorney ad litem under Section 107.016; and

(B) if the court declines to appoint an attorney ad litem for the child, state the reason for declining to appoint an attorney ad litem; and

(2) for a child who is represented by an attorney ad litem:

(A) shall consider the need for continued appointment of the attorney ad litem for the

child; and

(B) may discharge the attorney ad litem appointed for the child if the court finds that:

(i) the child is eligible for adoption and living in the home identified in the permanency plan as the child's permanent home;

(ii) the child's attorney ad litem or guardian ad litem does not object to the child's permanency plan; and

(iii) the child has resided in the home described by Subparagraph (i) for at least three months.

SECTION 2. The changes in law made by this Act apply to a suit affecting the parent-child relationship filed before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2017.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.