BILL ANALYSIS

BACKGROUND AND PURPOSE

Youth in the foster care system may be more susceptible than their peers to juvenile justice system involvement, and engagement with the juvenile justice system may put youth at increased risk of negative outcomes. These youth, commonly referred to as dual-status youth, benefit from a unique approach. Currently, the role of the guardian ad litem is more defined and broader in a child welfare case than it is in a juvenile justice case. C.S.H.B. 3895 seeks to clarify the role of a guardian ad litem in dual-status cases by authorizing a juvenile court to appoint the guardian ad litem appointed for a child in a suit filed by the Department of Family and Protective Services to serve as the guardian ad litem in proceedings under the juvenile justice code.

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. 3895 amends the Family Code to authorize a juvenile court to appoint the guardian ad litem who is appointed for a child in a suit filed by the Department of Family and Protective Services (DFPS) under Family Code provisions governing special appointments, child custody evaluations, and adoption evaluations to also serve as the guardian ad litem for the child in a proceeding held under the juvenile justice code.

C.S.H.B. 3895 authorizes a court to appoint the person appointed as such a guardian ad litem to also serve as the guardian ad litem for a child in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child if the person is applicably qualified to serve as guardian ad litem under Family Code provisions governing special appointments, child custody evaluations, and adoption evaluations.

C.S.H.B. 3895 prohibits a non-attorney guardian ad litem in a case involving a dual-system child from investigating any charges involving a dual-status child that are pending with the juvenile court or offering testimony concerning the guilt or innocence of a dual-status child.

C.S.H.B. 3895 authorizes a juvenile court to consider written reports from guardians ad litem appointed under the bill's provisions at the following hearings:
- a detention hearing for a child in custody;
- a transfer hearing if the juvenile court waives its jurisdiction and transfers a child to an appropriate court for criminal proceedings;

- a disposition hearing;
- a hearing to modify a disposition; and
- a release or transfer hearing for a person committed to the Texas Juvenile Justice Department.

C.S.H.B. 3895 defines "dual-system child" and "dual-status child" as follows:
- "dual-system child" means a child who, at any time before the child's 18th birthday, was referred to the juvenile justice system and was involved in the child welfare system by being:
    - placed in the temporary or permanent managing conservatorship of DFPS;
    - the subject of a family-based safety services case with DFPS;
    - an alleged victim of abuse or neglect in an active case being investigated by the DFPS child protective investigations division; or
    - a victim in a case in which the DFPS investigation concluded that there was a reason to believe that abuse or neglect occurred; and
- "dual-status child" means a dual-system child who is involved with both the child welfare and juvenile justice systems at the same time.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3895 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes definitions for "dual-system child" and "dual-status child," which were not included in the original.

The substitute does not include the original's prohibition against the guardian ad litem appointed in a suit filed by DFPS from investigating any pending criminal or juvenile charges involving the child. However, the substitute specifies that the guardian at litem appointed under the juvenile justice code who may be appointed by the court to also serve as a guardian ad litem in a suit filed by DFPS must be applicably qualified under Family Code provisions governing special appointments, child custody evaluations, and adoption evaluations in order to serve. The original did not include this specification regarding qualification.

The substitute, with respect to the appointment of a guardian ad litem who is appointed in a suit filed by DFPS who may also be appointed to serve as a guardian ad litem under the juvenile justice code, retains the original's prohibition against that guardian ad litem investigating any charges involving the child that are pending with the juvenile court. However, the substitute also does the following with respect to such a guardian at litem:
- prohibits the guardian at litem from offering testimony concerning the guilt or innocence of a dual-status child, which was not in the original; and
- makes the retained prohibition and the added prohibition applicable only to a non-attorney guardian ad litem, which the original did not.

The substitute specifies that the guardian at litem appointed under the juvenile justice code who may be appointed by the court to also serve as a guardian ad litem in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child must be applicably qualified under Family Code provisions governing special appointments, child custody evaluations, and adoption evaluations in order to serve. The original did not include this specification regarding qualification.