87R11556 MCK-D

By:  Dutton H.B. No. 3245

A BILL TO BE ENTITLED

AN ACT

relating to eliminating the court appointed advocates.

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

SECTION 1.  Section 29.0151(e), Education Code, is amended to read as follows:

(e)  The district may appoint a person who has been appointed to serve as a child's guardian ad litem [~~or as a court-certified volunteer advocate, as provided under Section 107.031(c), Family Code,~~] as the child's surrogate parent.

SECTION 2.  Section 107.001(5), Family Code, is amended to read as follows:

(5)  "Guardian ad litem" means a person appointed to represent the best interests of a child. The term includes:

(A)  [~~a volunteer advocate from a charitable organization described by Subchapter C who is appointed by the court as the child's guardian ad litem;~~

[~~(B)~~]  a professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child's best interests;

(B) [~~(C)~~]  an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(C) [~~(D)~~]  an attorney ad litem appointed to serve in the dual role.

SECTION 3.  Section 107.011(b), Family Code, is amended to read as follows:

(b)  The guardian ad litem appointed for a child under this section may be:

(1)  [~~a charitable organization composed of volunteer advocates or an individual volunteer advocate appointed under Subchapter C;~~

[~~(2)~~]  an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(2) [~~(3)~~]  an attorney appointed in the dual role.

SECTION 4.  Section 107.022, Family Code, is amended to read as follows:

Sec. 107.022.  CERTAIN PROHIBITED APPOINTMENTS. In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may not appoint[~~:~~

[~~(1)~~]  an attorney to serve in the dual role[~~; or~~

[~~(2)  a volunteer advocate to serve as guardian ad litem for a child unless the training of the volunteer advocate is designed for participation in suits other than suits filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child~~].

SECTION 5.  Section 107.023(a), Family Code, is amended to read as follows:

(a)  In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, in addition to the attorney's fees that may be awarded under Chapter 106, the following persons are entitled to reasonable fees and expenses in an amount set by the court and ordered to be paid by one or more parties to the suit:

(1)  an attorney appointed as an amicus attorney or as an attorney ad litem for the child; and

(2)  a professional who holds a relevant professional license and who is appointed as guardian ad litem for the child[~~, other than a volunteer advocate~~].

SECTION 6.  Section 202.002(a), Family Code, is amended to read as follows:

(a)  A friend of the court may coordinate nonjudicial efforts to improve compliance with a court order relating to child support or possession of or access to a child by use of:

(1)  telephone communication;

(2)  written communication;

(3)  [~~one or more volunteer advocates under Chapter 107;~~

[~~(4)~~]  informal pretrial consultation;

(4) [~~(5)~~]  one or more of the alternate dispute resolution methods under Chapter 154, Civil Practice and Remedies Code;

(5) [~~(6)~~]  a licensed social worker;

(6) [~~(7)~~]  a family mediator; and

(7) [~~(8)~~]  employment agencies, retraining programs, and any similar resources to ensure that both parents can meet their financial obligations to the child.

SECTION 7.  Section 263.0021(b), Family Code, is amended to read as follows:

(b)  The following persons are entitled to at least 10 days' notice of a hearing under this chapter and are entitled to present evidence and be heard at the hearing:

(1)  the department;

(2)  the foster parent, preadoptive parent, relative of the child providing care, or director or director's designee of the group home or general residential operation where the child is residing;

(3)  each parent of the child;

(4)  the managing conservator or guardian of the child;

(5)  an attorney ad litem appointed for the child under Chapter 107, if the appointment was not dismissed in the final order;

(6)  a guardian ad litem appointed for the child under Chapter 107, if the appointment was not dismissed in the final order;

(7)  [~~a volunteer advocate appointed for the child under Chapter 107, if the appointment was not dismissed in the final order;~~

[~~(8)~~]  the child if:

(A)  the child is 10 years of age or older; or

(B)  the court determines it is appropriate for the child to receive notice; and

(8) [~~(9)~~]  any other person or agency named by the court to have an interest in the child's welfare.

SECTION 8.  Section 263.0025(e), Family Code, is amended to read as follows:

(e)  The court may appoint a child's guardian ad litem [~~or court-certified volunteer advocate, as provided by Section 107.031(c),~~] as the child's surrogate parent.

SECTION 9.  Section 263.008(b), Family Code, is amended to read as follows:

(b)  It is the policy of this state that each child in foster care be informed of the child's rights provided by state or federal law or policy that relate to:

(1)  abuse, neglect, exploitation, discrimination, and harassment;

(2)  food, clothing, shelter, and education;

(3)  medical, dental, vision, and mental health services, including the right of the child to consent to treatment;

(4)  emergency behavioral intervention, including what methods are permitted, the conditions under which it may be used, and the precautions that must be taken when administering it;

(5)  placement with the child's siblings and contact with members of the child's family;

(6)  privacy and searches, including the use of storage space, mail, and the telephone;

(7)  participation in school-related extracurricular or community activities;

(8)  interaction with persons outside the foster care system, including teachers, church members, mentors, and friends;

(9)  contact and communication with caseworkers, attorneys ad litem, and guardians ad litem[~~, and court-appointed special advocates~~];

(10)  religious services and activities;

(11)  confidentiality of the child's records;

(12)  job skills, personal finances, and preparation for adulthood;

(13)  participation in a court hearing that involves the child;

(14)  participation in the development of service and treatment plans;

(15)  if the child has a disability, the advocacy and protection of the rights of a person with that disability; and

(16)  any other matter affecting the child's ability to receive care and treatment in the least restrictive environment that is most like a family setting, consistent with the best interests and needs of the child.

SECTION 10.  Section 263.303(a), Family Code, is amended to read as follows:

(a)  Not later than the 10th day before the date set for each permanency hearing before a final order is rendered, the department shall file with the court and provide to each party, the child's attorney ad litem, and the child's guardian ad litem[~~, and the child's volunteer advocate~~] a permanency progress report unless the court orders a different period for providing the report.

SECTION 11.  Section 263.602(d), Family Code, is amended to read as follows:

(d)  Notice of an extended foster care review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to the following persons, each of whom has a right to present evidence and be heard at the hearing:

(1)  the young adult who is the subject of the suit;

(2)  the department;

(3)  the foster parent with whom the young adult is placed and the administrator of a child-placing agency responsible for placing the young adult, if applicable;

(4)  the director of the residential child-care facility or other approved provider with whom the young adult is placed, if applicable;

(5)  each parent of the young adult whose parental rights have not been terminated and who is still actively involved in the life of the young adult;

(6)  a legal guardian of the young adult, if applicable; and

(7)  the young adult's attorney ad litem and[~~,~~] guardian ad litem[~~, and volunteer advocate~~], the appointment of which has not been previously dismissed by the court.

SECTION 12.  Section 263.605, Family Code, is amended to read as follows:

Sec. 263.605.  CONTINUED OR RENEWED APPOINTMENT OF ATTORNEY AD LITEM, GUARDIAN AD LITEM, OR VOLUNTEER ADVOCATE. A court with extended jurisdiction under this subchapter may continue or renew the appointment of an attorney ad litem or[~~,~~] guardian ad litem[~~, or volunteer advocate~~] for the young adult to assist the young adult in accessing services the young adult is entitled to receive from the department or any other public or private service provider.

SECTION 13.  Section 264.015(c), Family Code, is amended to read as follows:

(c)  To the extent that resources are available, the department shall assist the following entities in developing training in trauma-informed programs and services and in locating money and other resources to assist the entities in providing trauma-informed programs and services:

(1)  [~~court-appointed special advocate programs;~~

[~~(2)~~]  children's advocacy centers;

(2) [~~(3)~~]  local community mental health centers created under Section 534.001, Health and Safety Code; and

(3) [~~(4)~~]  domestic violence shelters.

SECTION 14.  Sections 264.018(e) and (f), Family Code, are amended to read as follows:

(e)  Not later than 48 hours before the department changes the residential child-care facility of a child in the managing conservatorship of the department, the department shall provide notice of the change to:

(1)  the child's parent;

(2)  an attorney ad litem appointed for the child under Chapter 107;

(3)  a guardian ad litem appointed for the child under Chapter 107; and

(4)  [~~a volunteer advocate appointed for the child under Chapter 107; and~~

[~~(5)~~]  the licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee.

(f)  Except as provided by Subsection (d-1), as soon as possible but not later than the 10th day after the date the department becomes aware of a significant event affecting a child in the conservatorship of the department, the department shall provide notice of the significant event to:

(1)  the child's parent;

(2)  an attorney ad litem appointed for the child under Chapter 107;

(3)  a guardian ad litem appointed for the child under Chapter 107;

(4)  [~~a volunteer advocate appointed for the child under Chapter 107;~~

[~~(5)~~]  the licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;

(5) [~~(6)~~]  a foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and

(6) [~~(7)~~]  any other person determined by a court to have an interest in the child's welfare.

SECTION 15.  Section 264.107(e), Family Code, is amended to read as follows:

(e)  In making placement decisions, the department shall:

(1)  except when making an emergency placement that does not allow time for the required consultations, consult with the child's caseworker, attorney ad litem, and guardian ad litem [~~and with any court-appointed volunteer advocate for the child~~]; and

(2)  use clinical protocols to match a child to the most appropriate placement resource.

SECTION 16.  Section 264.1213, Family Code, is amended to read as follows:

Sec. 264.1213.  RECORDS AND DOCUMENTS FOR CHILDREN AGING OUT OF FOSTER CARE. The department in cooperation with [~~volunteer advocates from a charitable organization described by Subchapter C, Chapter 107, and~~] the Department of Public Safety shall develop procedures to ensure that a foster child obtains a driver's license or personal identification card before the child leaves the conservatorship of the department.

SECTION 17.  Section 264.1261(b), Family Code, as added by Chapter 319 (S.B. 11), Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

(b)  Appropriate department management personnel from a child protective services region in which community-based care has not been implemented, in collaboration with foster care providers and[~~,~~] faith-based entities[~~, and child advocates~~] in that region, shall use data collected by the department on foster care capacity needs and availability of each type of foster care and kinship placement in the region to create a plan to address the substitute care capacity needs in the region. The plan must identify both short-term and long-term goals and strategies for addressing those capacity needs.

SECTION 18.  Section 264.155, Family Code, is amended to read as follows:

Sec. 264.155.  REQUIRED CONTRACT PROVISIONS. A contract with a single source continuum contractor to provide community-based care services in a catchment area must include provisions that:

(1)  establish a timeline for the implementation of community-based care in the catchment area, including a timeline for implementing:

(A)  case management services for children, families, and relative and kinship caregivers receiving services in the catchment area; and

(B)  family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family;

(2)  establish conditions for the single source continuum contractor's access to relevant department data and require the participation of the contractor in the data access and standards governance council created under Section 264.159;

(3)  require the single source continuum contractor to create a single process for the training and use of alternative caregivers for all child-placing agencies in the catchment area to facilitate reciprocity of licenses for alternative caregivers between agencies, including respite and overnight care providers, as those terms are defined by department rule;

(4)  require the single source continuum contractor to maintain a diverse network of service providers that offer a range of foster capacity options and that can accommodate children from diverse cultural backgrounds;

(5)  allow the department to conduct a performance review of the contractor beginning 18 months after the contractor has begun providing case management and family reunification support services to all children and families in the catchment area and determine if the contractor has achieved any performance outcomes specified in the contract;

(6)  following the review under Subdivision (5), allow the department to:

(A)  impose financial penalties on the contractor for failing to meet any specified performance outcomes; or

(B)  award financial incentives to the contractor for exceeding any specified performance outcomes;

(7)  require the contractor to give preference for employment to employees of the department:

(A)  whose position at the department is impacted by the implementation of community-based care; and

(B)  who are considered by the department to be employees in good standing;

(8)  require the contractor to provide preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area, including any of the following:

(A)  community faith-based entities;

(B)  the judiciary;

(C)  [~~court-appointed special advocates;~~

[~~(D)~~]  child advocacy centers;

(D) [~~(E)~~]  service providers;

(E) [~~(F)~~]  foster families;

(F) [~~(G)~~]  biological parents;

(G) [~~(H)~~]  foster youth and former foster youth;

(H) [~~(I)~~]  relative or kinship caregivers;

(I) [~~(J)~~]  child welfare boards, if applicable;

(J) [~~(K)~~]  attorneys ad litem;

(K) [~~(L)~~]  attorneys that represent parents involved in suits filed by the department; and

(L) [~~(M)~~]  any other stakeholders, as determined by the contractor; and

(9)  require that the contractor comply with any applicable court order issued by a court of competent jurisdiction in the case of a child for whom the contractor has assumed case management responsibilities or an order imposing a requirement on the department that relates to functions assumed by the contractor.

SECTION 19.  Section 264.408(a), Family Code, is amended to read as follows:

(a)  The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter. Disclosure may be made to:

(1)  the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state or local agencies that provide services to children and families; and

(2)  the attorney for the alleged victim who is the subject of the records [~~and a court-appointed volunteer advocate appointed for the alleged victim under Section 107.031~~].

SECTION 20.  Section 36.003, Government Code, is amended to read as follows:

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)  information made confidential under state or federal law, including applicable rules;

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

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

(5)  an attorney ad litem, guardian ad litem, amicus attorney, or mediator providing services without expectation or receipt of compensation; or

(6)  an attorney ad litem, guardian ad litem, amicus attorney, or mediator providing services as a volunteer of a nonprofit organization that provides pro bono legal services to the indigent.

SECTION 21.  Section 37.002, Government Code, is amended to read as follows:

Sec. 37.002.  EXEMPTION. The appointment requirements of Section 37.004 do not apply to:

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

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

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

(4)  a person other than an attorney or a private professional guardian appointed to serve as a guardian as defined by Section 1002.012, Estates Code;

(5)  an attorney ad litem, guardian ad litem, amicus attorney, or mediator providing services without expectation or receipt of compensation; or

(6)  an attorney ad litem, guardian ad litem, amicus attorney, or mediator providing services as a volunteer of a nonprofit organization that provides pro bono legal services to the indigent.

SECTION 22.  Section 497.012(b), Government Code, is amended to read as follows:

(b)  If the department determines that it is economically feasible, the department shall repair or refurbish the surplus or salvage data processing equipment. The department shall sell the repaired or refurbished data processing equipment, in the following order of preference, to:

(1)  a school district;

(2)  a state agency; or

(3)  a political subdivision of the state[~~; or~~

[~~(4)  a statewide organization described by Section 264.603(a), Family Code, or a local volunteer advocate program, as defined by Section 264.601, Family Code, for use by children or youth in foster care~~].

SECTION 23.  Section 40.021(b), Human Resources Code, is amended to read as follows:

(b)  The council is composed of nine members of the public appointed by the governor. In making appointments to the council, the governor shall consider persons who have a demonstrated knowledge of the department and the health and human services system in general, including former department employees, [~~court-appointed special advocates,~~] foster care providers, and employees of child advocacy centers.

SECTION 24.  Section 244.0105(a), Human Resources Code, is amended to read as follows:

(a)  Not later than the 10th day before the date of a permanency hearing under Subchapter D, Chapter 263, Family Code, or Subchapter F, Chapter 263, Family Code, regarding a child for whom the Department of Family and Protective Services has been appointed managing conservator, a department caseworker shall submit a written report regarding the child's commitment to the department to:

(1)  the court;

(2)  the Department of Family and Protective Services; and

(3)  any attorney ad litem or guardian ad litem appointed for the child[~~; and~~

[~~(4)  any volunteer advocate appointed for the child~~].

SECTION 25.  Section 244.0106(c), Human Resources Code, is amended to read as follows:

(c)  The rules adopted under this section must require:

(1)  the Department of Family and Protective Services to:

(A)  provide the department with access to relevant health and education information regarding a child; and

(B)  require a child's caseworker to visit the child in person at least once each month while the child is committed to the department;

(2)  the department to:

(A)  provide the Department of Family and Protective Services with relevant health and education information regarding a child;

(B)  permit communication, including in person, by telephone, and by mail, between a child committed to the department and:

(i)  the Department of Family and Protective Services; and

(ii)  the attorney ad litem and[~~,~~] the guardian ad litem[~~, and the volunteer advocate~~] for the child; and

(C)  provide the Department of Family and Protective Services and any attorney ad litem or guardian ad litem for the child with timely notice of the following events relating to the child:

(i)  a meeting designed to develop or revise the individual case plan for the child;

(ii)  in accordance with any participation protocols to which the Department of Family and Protective Services and the department agree, a medical appointment at which a person authorized to consent to medical care must participate as required by Section 266.004(i), Family Code;

(iii)  an education meeting, including admission, review, or dismissal meetings for a child receiving special education;

(iv)  a grievance or disciplinary hearing for the child;

(v)  a report of abuse or neglect of the child; and

(vi)  a significant change in medical condition of the child, as defined by Section 264.018, Family Code; and

(3)  the Department of Family and Protective Services and the department to participate in transition planning for the child through release from detention, release under supervision, and discharge.

SECTION 26.  Section 244.052(c), Human Resources Code, is amended to read as follows:

(c)  The department shall on a quarterly basis provide to the parent or[~~,~~] guardian[~~, or designated advocate~~] of a child who is in the custody of the department a report concerning the progress of the child at the department, including:

(1)  the academic and behavioral progress of the child; and

(2)  the results of any reexamination of the child conducted under Section 244.002.

SECTION 27.  Section 245.103(d), Human Resources Code, is amended to read as follows:

(d)  The department shall provide a report to the parent or[~~,~~] guardian[~~, or designated advocate~~] of a child whose length of stay is extended under Section 245.102 explaining the panel's reason for the extension.

SECTION 28.  Section 245.104(b), Human Resources Code, is amended to read as follows:

(b)  The process to request reconsideration must provide that:

(1)  a child, a parent or[~~,~~] guardian[~~, or designated advocate~~] of a child, an employee of the department, or a person who provides volunteer services at a department facility may submit a request for reconsideration of an extension order;

(2)  the person submitting the request for reconsideration of an extension order must state in the request the reason for the request;

(3)  after receiving a request for reconsideration of an extension order, the panel shall reconsider an extension order that:

(A)  extends the child's stay in the custody of the department by six months or more; or

(B)  combined with previous extension orders will result in an extension of the child's stay in the custody of the department by six months or more;

(4)  the panel's reconsideration of an extension order includes consideration of the information submitted in the request; and

(5)  the panel shall send a written reply to the child, the parent or[~~,~~] guardian[~~, or designated advocate~~] of the child, and the person who made the request for reconsideration of an extension order that includes an explanation of the panel's decision after reconsidering the extension order, including an indication that the panel has considered the information submitted in the request.

SECTION 29.  The following provisions are repealed:

(1)  Subchapter C, Chapter 107, Family Code;

(2)  Section 264.1261(b), Family Code, as added by Chapter 822 (H.B. 1549), Acts of the 85th Legislature, Regular Session, 2017;

(3)  Subchapter G, Chapter 264, Family Code; and

(4)  Section 504.611, Transportation Code.

SECTION 30.  This Act takes effect September 1, 2021.