

## **BILL ANALYSIS**

C.S.H.B. 1499  
By: Campos  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised by Department of Family and Protective Services (DFPS) management over inconsistent and insufficient representation from court-appointed guardians ad litem (GALs) and attorneys ad litem (AALs) for both at-risk children and their parents and guardians while such children are in DFPS managed conservatorship. For example, court-appointed AALs or GALs may meet as late as the day before or even the day of a scheduled hearing, which is inadequate representation in Texas. C.S.H.B. 1499 seeks to address these issues by providing a more defined timeline of when court-appointed GALs and AALs must consult with their clients and by requiring more timely and more frequent meetings, proper interviews with the appropriate parties, thorough reviews of investigation case findings and of placements, and accurate representation of clients' best interests in court. Specifically, AALs and GALs will be required to consult with their clients not later than the seventh day after the AAL or GAL is appointed, at least 72 hours prior to scheduled hearings, and at least once each month to properly monitor the child's safety and well-being.

### **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. 1499 amends the Family Code to revise provisions relating to the duties of court-appointed guardians ad litem, attorneys ad litem, and amicus attorneys in certain suits affecting the parent-child relationship by doing the following:

- lowering from four years, as provided under current law, to three years the minimum age at which a child qualifies to be interviewed by a guardian ad litem appointed for a child, an attorney ad litem appointed to represent a child, or an amicus attorney appointed to assist the court; and
- changing the period, as provided under current law, within which the applicable guardian or attorney must complete the following actions from within a reasonable time after the applicable guardian or attorney's appointment to not later than the seventh business day after the appointment:
  - the deadline by which a guardian ad litem appointed for a child, an attorney ad litem appointed to represent a child, or an amicus attorney appointed to assist the court must interview the child's caregiver or the administrator of the licensed child-placing agency that placed the child, including the child, if the child is three years of age or older, and the parties to the suit; and

- the deadline by which an attorney ad litem representing the interests of a parent must interview the parent, each person who has significant knowledge of the case, and the parties to the suit.

C.S.H.B. 1499 requires a guardian ad litem appointed for a child, an attorney ad litem appointed to represent a child, or an amicus attorney appointed to assist the court, not later than the 15th business day after the date of their appointment, to interview each person who has significant knowledge of the child's history and condition, including educators, child welfare service providers, and any foster parent of the child. The bill entitles the attorney ad litem or amicus attorney to participate in any case staffing concerning the child conducted by a single source continuum contractor.

C.S.H.B. 1499 changes certain requirements in current law with respect to a guardian ad litem appointed for a child or an attorney ad litem appointed to represent a child as follows:

- raises from 16 years to 17 years the minimum age of a child that triggers the requirement for their guardian or attorney to ascertain whether the child has received certain personal identification documents, including any such documents that a single source continuum contractor determines are appropriate;
- raises from 16 years to 17 years the minimum age of a child that triggers the requirement for an attorney ad litem to advise the child of the child's right to request the court to authorize the child to consent to the child's own medical care;
- removes the requirement for the guardian or attorney to seek to elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child and immediately provide the names of those individuals to the Department of Family and Protective Services (DFPS); and
- requires instead that the guardian or attorney, for a child at least 13 years of age, ascertain whether the child has received a personal identification certificate under applicable Transportation Code provisions.

C.S.H.B. 1499 specifies that the following meetings involving a child and caretaker, and, as applicable, a guardian ad litem or attorney ad litem, must take place at least 72 hours before the applicable hearing:

- before a hearing in certain child protection suits, the meeting required between the guardian ad litem appointed to represent the child to determine whether the child's educational needs and goals have been identified and addressed; and
- before a hearing in certain child protection suits, the meeting required between the child's attorney ad litem and the child, if the child is at least four years of age, or the individual with whom the child ordinarily resides, if the child is younger than four years of age.

C.S.H.B. 1499 changes the grounds on which, under current law, an attorney ad litem appointed to represent a child or an attorney appointed in the dual role may determine that the child cannot meaningfully formulate the child's objectives of representation in a case, as follows:

- removes as the basis for the determination that the child:
  - lacks sufficient maturity to understand and form an attorney-client relationship with the attorney;
  - despite appropriate legal counseling, continues to express objectives of representation that would be seriously injurious to the child; or
  - for any other reason is incapable of making reasonable judgments; and
- establishes instead, as the basis for the determination, that the child has an intellectual or developmental disability that causes the child to be incapable of:
  - forming an attorney-client relationship with the attorney;
  - making reasonable judgments; or
  - engaging in meaningful communication.

C.S.H.B. 1499 specifies that the determination under current law by an attorney ad litem or an attorney appointed in the dual role that the child cannot meaningfully formulate the child's expressed objectives of representation and that the attorney may then present to the court a position that the attorney determines will serve the best interests of the child, is a determination that is based on medical or developmental reasons.

C.S.H.B. 1499 revises the requirement under current law for an attorney ad litem or an attorney appointed in the dual role who determines that a child, for whom a guardian ad litem has been appointed in a suit filed by an applicable governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, cannot meaningfully formulate the child's expressed objectives of representation, to consult with the guardian ad litem to remove the condition that the attorney conduct the consultation without being bound by the guardian ad litem's opinion or recommendation.

C.S.H.B. 1499 requires the attorney ad litem appointed under current law to represent a child in the managing conservatorship of DFPS or a child who is the subject of a proceeding of child welfare services to review the child's safety and well-being at least once each month and accordingly removes the specification in current law requiring the attorney to periodically continue to review the child's safety and well-being. The bill adds the following deadlines to current law with respect to the required appointment of a guardian ad litem and the applicable requisite meeting an attorney ad litem must attend as follows:

- the court must appoint a guardian ad litem to represent the best interests of a child not later than 72 hours before the full adversarial hearing in a suit filed by an applicable governmental entity seeking or requesting termination of the parent-child relationship or the appointment of a conservator for the child; and
- an attorney ad litem appointed to represent the interests of a parent in such a suit must meet with the parent at least 72 hours before each court hearing.

The bill applies only to a suit affecting the parent-child relationship filed on or after the bill's effective date.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 1499 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute makes the following changes to current law whereas the introduced did not:

- lowers the minimum age at which a child qualifies to be interviewed by a guardian ad litem appointed for a child, an attorney ad litem appointed to represent a child, or an amicus attorney appointed to assist the court;
- changes the adult individuals, other than the parties to the suit, who must be interviewed by the applicable guardian or attorney not later than the seventh day after the applicable guardian or attorney's appointment to the child's caregiver or the administrator of the licensed child-placing agency that placed the child;
- changes certain requirements with respect to a guardian ad litem appointed for a child or an attorney ad litem appointed to represent a child with respect to the child's age and possible caretakers;
- changes the grounds on which an attorney ad litem appointed to represent a child or an attorney appointed in the dual role may determine that the child cannot meaningfully formulate the child's objectives of representation in a case;

- specifies that the determination by an attorney ad litem or an attorney appointed in the dual role that the child cannot meaningfully formulate the child's expressed objectives is a determination that is based on medical or developmental reasons; and
- revises the requirement for an attorney ad litem or an attorney appointed in the dual role who determines that a child cannot meaningfully formulate the child's expressed objectives of representation to consult with the guardian ad litem, as applicable, to remove the condition that the attorney conduct the consultation without being bound by the guardian ad litem's opinion or recommendation.

The substitute includes provisions revising current law that were not in the introduced that do the following:

- require the applicable guardian or attorney to interview each person who has significant knowledge of the child's history and condition, including educators, child welfare service providers, and any foster parent of the child not later than the 15th business day after the date of the appointment;
- entitle an applicable attorney to participate in any case staffing concerning the child conducted by a single source continuum contractor; and
- require the applicable guardian or attorney, for a child at least 13 years of age, to ascertain whether the child has received a personal identification certificate under applicable Transportation Code provisions.