

## **BILL ANALYSIS**

Senate Research Center  
88R5928 AMF-D

S.B. 2109  
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Jurisprudence  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas Court Appointed Special Advocate (CASA) and local CASA programs are essential to promoting positive outcomes for children, youth, and families involved in the child welfare process. CASA volunteers are well-trained and work to address a child's mental, medical, and educational needs while they are involved with the child welfare system. They represent the best interest of the child in court, help ensure children are safe, and advocate to keep families together when it is possible. CASA volunteers learn about the child by getting to know the child's family, community members (caregivers, foster care providers, doctors, therapists, teachers, etc.) and legal team (their attorney and their caseworker). Children can also often benefit from the service of a CASA volunteer even before a suit has been filed to remove the child from their family. A court-ordered services (COS) case (sometimes called a motion to participate) is a case in which the Department of Family and Protective Services (DFPS) recommends court-ordered services for one or both parents, such as drug treatment services or parenting courses. A CASA volunteer who is appointed by a judge in this type of case can advocate for the best interest of the child in court while supporting the family to complete their court-ordered services.

Currently, the law limits CASA's state funding to serving children who are formally in foster care. This prevents CASA from providing critical support to children and families who need help remaining safely together outside of the foster care system. CASA programs should be eligible for appointment by a court whether they have a COS case (and not in formal foster care) or a conservatorship case (and in formal foster care).

S.B. 2109 would allow CASA programs to utilize state funding for all child welfare cases, including COS case. Additionally, S.B. 2109 would clarify the types of cases in which judges can appoint volunteer advocates, including CASA, and would allow optional appointment of guardians ad litem to COS to help ensure that children receive best-interest representation.

[Note: While the statutory reference in this bill is to the Health and Human Services Commission, the following amendments affect the Department of Family and Protective Services.]

As proposed, S.B. 2109 amends current law relating to the appointment of a guardian ad litem in certain suits filed by the Department of Family and Protective Services.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 107.002(b-1), Family Code, as follows:

(b-1) Requires a guardian ad litem appointed for a child in a proceeding under Section 264.203 (Required Participation), in addition to the duties required by Subsection (b) (relating to requiring a guardian ad litem appointed for the child to take certain actions), to take certain actions.

SECTION 2. Amends Sections 107.031(a) and (b), Family Code, as follows:

(a) Authorizes a court, rather than the court in a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, to appoint a charitable organization composed of volunteer advocates whose charter mandates the provision of services to allegedly abused and neglected children or an individual who has received the court's approved training regarding abused and neglected children and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child in:

(1) a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child; or

(2) a suit filed by a governmental entity under Section 264.203.

(b) Authorizes the court, in a suit other than a suit described by Subsection (a), rather than 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, to appoint a charitable organization composed of volunteer advocates whose training provides for the provision of services in private custody disputes or a person who has received the court's approved training regarding the subject matter of the suit and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child.

SECTION 3. Amends Section 264.203, Family Code, by adding Subsections (g-1), (g-2), (g-3), and (g-4), as follows:

(g-1) Authorizes the court to appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the hearing. Requires the guardian ad litem for the child shall have the powers and duties of a guardian ad litem for a child under Chapter 107 (Special Appointments, Child Custody Evaluations, and Adoption Evaluations). Authorizes the guardian ad litem appointed for the child to be:

(1) a charitable organization composed of volunteer advocates or an individual volunteer advocate appointed under Subchapter C (Child and Family Services);

(2) an adult with the competence, training, and expertise the court determines is sufficient to represent the best interests of the child; or

(3) an attorney appointed in the dual role.

(g-2) Prohibits the court from appointing a guardian ad litem in a suit filed by a governmental entity if an attorney is appointed in the dual role unless the court appoints another person to serve as guardian ad litem for the child and restricts the role of the attorney to acting as an attorney ad litem for the child.

(g-3) Authorizes the court to appoint an attorney to serve as guardian ad litem for a child without appointing the attorney to serve in the dual role only if the attorney is specifically appointed to serve only in the role of guardian ad litem. Provides that an attorney appointed solely as a guardian ad litem:

(1) is authorized to take only those actions that are authorized to be taken by a nonattorney guardian ad litem; and

(2) is prohibited from:

(A) performing legal services in the case; or

(B) taking any action that is restricted to a licensed attorney, including engaging in discovery other than as a witness, making opening and closing statements, or examining witnesses.

(g-4) Authorizes the court to appoint the person appointed as guardian ad litem for the child under Section 51.11 (Guardian ad Litem) to also serve as the guardian ad litem for the child under this section if the person is qualified under Chapter 107 to serve as guardian ad litem.

SECTION 4. Amends Section 264.601, Family Code, as follows:

Sec. 264.601. DEFINITIONS. Defines "allegedly abused or neglected child." Redefines "volunteer advocate program."

SECTION 5. Amends Section 264.602(a), Family Code, to make a conforming change.

SECTION 6. Amends Section 264.604(a), Family Code, to make a conforming change.

SECTION 7. Amends Section 264.606, Family Code, as follows:

Sec. 264.606. CRITERIA FOR AWARD OF CONTRACTS. Requires the statewide organization with which the Health and Human Services commission (HHSC) contracts under Section 264.603 (Administrative Contracts) to consider certain criteria in awarding a contract under Section 264.602 (Contracts with Advocate Programs), including whether the volunteer advocate program provides services that promote the best interest of children, rather than services that encourage the permanent placement of children through reunification with their families or timely placement with an adoptive family.

SECTION 8. Amends Section 264.607, Family Code, as follows:

Sec. 264.607. CONTRACT REQUIREMENTS. Requires HHSC to require that a contract under Section 264.602 require the volunteer advocate program to provide, as a minimum, advocacy through the courts for the best interest of the child, rather than for permanent home placement and rehabilitation services for the child.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2023.