By:  Lujan, Leo-Wilson, Neave Criado, Bailes, H.B. No. 2794

     Murr, et al.

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a guardian ad litem in certain suits filed by the Department of Family and Protective Services.

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

SECTION 1.  Section 107.002(b-1), Family Code, is amended to read as follows:

(b-1)  In addition to the duties required by Subsection (b), a guardian ad litem appointed for a child in a proceeding under Chapter 262 or 263 or Section 264.203 shall:

(1)  review the medical care provided to the child;

(2)  in a developmentally appropriate manner, seek to elicit the child's opinion on the medical care provided;

(3)  for a child at least 16 years of age, ascertain whether the child has received the following documents:

(A)  a certified copy of the child's birth certificate;

(B)  a social security card or a replacement social security card;

(C)  a driver's license or personal identification certificate under Chapter 521, Transportation Code; and

(D)  any other personal document the Department of Family and Protective Services determines appropriate; and

(4)  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.

SECTION 2.  Section 107.031, Family Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a)  A [~~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, the~~] court may 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.

(a-1)  A court that appoints a guardian ad litem under Subsection (a) shall prioritize appointments in suits described by Subsection (a)(1). A court may not appoint a guardian ad litem in a suit described by Subsection (a)(2) unless, at the time the court considers the appointment, each suit before the court described by Subsection (a)(1) for which a guardian ad litem may be appointed has received an appointment.

(b)  In a suit other than a suit described by Subsection (a) [~~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 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. A person appointed under this subsection is not entitled to fees under Section 107.023.

SECTION 3.  Section 264.203, Family Code, is amended by adding Subsections (g-1), (g-2), (g-3), (g-4), (g-5), and (g-6) to read as follows:

(g-1)  Subject to Section 107.031(a-1), the court may appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the hearing. The guardian ad litem for the child shall have the powers and duties of a guardian ad litem for a child under Chapter 107. The guardian ad litem appointed for the child may be:

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

(2)  an attorney appointed in a dual role.

(g-2)  The court may not appoint 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)  The court may 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. An attorney appointed solely as a guardian ad litem:

(1)  may take only those actions that may be taken by a nonattorney guardian ad litem; and

(2)  may not:

(A)  perform legal services in the case; or

(B)  take 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)  The court may appoint the person appointed as guardian ad litem for the child under Section 51.11 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.

(g-5)  In a suit filed under this section, a parent retains the parent's legal and parental rights and it is a rebuttable presumption that:

(1)  a parent acts in the best interest of the parent's child; and

(2)  it is in the best interest of a child to be in the care, custody, and control of a parent.

(g-6)  A charitable organization composed of volunteer advocates or an individual volunteer advocate appointed as guardian ad litem for a child under Subsection (g-1):

(1)  shall consider the presumptions under Subsection (g-5) before making any recommendation to the court; and

(2)  may not recommend the court order removal of the child from the child's parent.

SECTION 4.  Section 264.601, Family Code, is amended to read as follows:

Sec. 264.601.  DEFINITIONS. In this subchapter:

(1)  "Allegedly abused [~~Abused~~] or neglected child" means a child:

(A)  who is:

(i) [~~(A)~~]  the subject of a suit affecting the parent-child relationship filed by a governmental entity; and

(ii) [~~(B)~~]  under the control or supervision of the department; or

(B)  who is the subject of a suit filed by a governmental entity under Section 264.203.

(2)  "Volunteer advocate program" means a volunteer-based, nonprofit program that:

(A)  provides advocacy services to allegedly abused or neglected children with the goal of promoting [~~obtaining a permanent placement for a child that is in~~] the child's best interest; and

(B)  complies with recognized standards for volunteer advocate programs.

SECTION 5.  Section 264.602(a), Family Code, is amended to read as follows:

(a)  The statewide organization with which the commission contracts under Section 264.603 shall contract for services with eligible volunteer advocate programs to provide advocacy services to allegedly abused or neglected children.

SECTION 6.  Section 264.604(a), Family Code, is amended to read as follows:

(a)  A person is eligible for a contract under Section 264.602 only if the person is a public or private nonprofit entity that operates a volunteer advocate program that:

(1)  uses individuals appointed as volunteer advocates or guardians ad litem by the court to provide for the needs of allegedly abused or neglected children;

(2)  has provided court-appointed advocacy services for at least six months;

(3)  provides court-appointed advocacy services for at least 10 children each month; and

(4)  has demonstrated that the program has local judicial support.

SECTION 7.  Section 264.606, Family Code, is amended to read as follows:

Sec. 264.606.  CRITERIA FOR AWARD OF CONTRACTS. The statewide organization with which the commission contracts under Section 264.603 shall consider the following in awarding a contract under Section 264.602:

(1)  the volunteer advocate program's eligibility for and use of funds from local, state, or federal governmental sources, philanthropic organizations, and other sources;

(2)  community support for the volunteer advocate program as indicated by financial contributions from civic organizations, individuals, and other community resources;

(3)  whether the volunteer advocate program provides services that promote the best interest of children [~~encourage the permanent placement of children through reunification with their families or timely placement with an adoptive family~~]; and

(4)  whether the volunteer advocate program has the endorsement and cooperation of the local juvenile court system.

SECTION 8.  Section 264.607, Family Code, is amended to read as follows:

Sec. 264.607.  CONTRACT REQUIREMENTS. The commission shall require that a contract under Section 264.602 require the volunteer advocate program to:

(1)  make quarterly and annual financial reports on a form provided by the commission;

(2)  cooperate with inspections and audits that the commission makes to ensure service standards and fiscal responsibility; and

(3)  provide as a minimum:

(A)  independent and factual information in writing to the court and to counsel for the parties involved regarding the child;

(B)  advocacy through the courts for the best interest of the child [~~permanent home placement and rehabilitation services for the child~~];

(C)  monitoring of the child to ensure the safety of the child and to prevent unnecessary movement of the child to multiple temporary placements;

(D)  reports in writing to the presiding judge and to counsel for the parties involved;

(E)  community education relating to child abuse and neglect;

(F)  referral services to existing community services;

(G)  a volunteer recruitment and training program, including adequate screening procedures for volunteers;

(H)  procedures to assure the confidentiality of records or information relating to the child; and

(I)  compliance with the standards adopted under Section 264.602.

SECTION 9.  The changes in law made by this Act apply to a suit filed by a governmental entity that is pending in a trial court on or filed on or after the effective date of this Act.

SECTION 10.  This Act takes effect September 1, 2023.