

By: Campos

H.B. No. 1499

Substitute the following for H.B. No. 1499:

By: Dutton

C.S.H.B. No. 1499

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the duties of court-appointed guardians ad litem,  
3 attorneys ad litem, and amicus attorneys in certain suits affecting  
4 the parent-child relationship.

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

6 SECTION 1. Sections 107.002(b), (b-1), and (i), Family  
7 Code, are amended to read as follows:

8 (b) A guardian ad litem appointed for the child under this  
9 chapter shall:

10 (1) not later than the seventh business day [~~within a~~  
11 ~~reasonable time~~] after the date of the appointment, interview:

12 (A) the child in a developmentally appropriate  
13 manner, if the child is three [~~four~~] years of age or older;

14 (B) the child's caregiver or the administrator of  
15 the licensed child-placing agency that placed the child [~~each~~  
16 ~~person who has significant knowledge of the child's history and~~  
17 ~~condition, including educators, child welfare service providers,~~  
18 ~~and any foster parent of the child~~]; and

19 (C) the parties to the suit;

20 (2) not later than the 15th business day after the date  
21 of the appointment, interview each person who has significant  
22 knowledge of the child's history and condition, including  
23 educators, child welfare service providers, and any foster parent  
24 of the child;

1           (3) seek to elicit in a developmentally appropriate  
2 manner the child's expressed objectives;

3           (4) [~~(3)~~] consider the child's expressed objectives  
4 without being bound by those objectives;

5           (5) [~~(4)~~] encourage settlement and the use of  
6 alternative forms of dispute resolution; and

7           (6) [~~(5)~~] perform any specific task directed by the  
8 court.

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

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

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

15           (3) for a child at least 17 [~~16~~] years of age,  
16 ascertain whether the child has received the following documents:

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

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

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

24                   (D) any other personal document the Department of  
25 Family and Protective Services or single source continuum  
26 contractor determines appropriate; and

27           (4) for a child at least 13 years of age, ascertain

1 whether the child has received a personal identification  
2 certificate under Chapter 521, Transportation Code [~~seek to elicit~~  
3 ~~in a developmentally appropriate manner the name of any adult,~~  
4 ~~particularly an adult residing in the child's community, who could~~  
5 ~~be a relative or designated caregiver for the child and immediately~~  
6 ~~provide the names of those individuals to the Department of Family~~  
7 ~~and Protective Services~~].

8 (i) A guardian ad litem appointed to represent a child in  
9 the managing conservatorship of the Department of Family and  
10 Protective Services shall, at least 72 hours before each scheduled  
11 hearing under Chapter 263, determine whether the child's  
12 educational needs and goals have been identified and addressed.

13 SECTION 2. Section 107.003, Family Code, is amended to read  
14 as follows:

15 Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR  
16 CHILD AND AMICUS ATTORNEY. (a) An attorney ad litem appointed to  
17 represent a child or an amicus attorney appointed to assist the  
18 court:

19 (1) shall:

20 (A) subject to Rules 4.02, 4.03, and 4.04, Texas  
21 Disciplinary Rules of Professional Conduct, and not later than the  
22 seventh business day [~~within a reasonable time~~] after the date of  
23 the appointment, interview:

24 (i) the child in a developmentally  
25 appropriate manner, if the child is three [~~four~~] years of age or  
26 older;

27 (ii) the child's caregiver or the

1 administrator of the licensed child-placing agency that placed the  
2 child [~~each person who has significant knowledge of the child's~~  
3 ~~history and condition, including any foster parent of the child~~];  
4 and

5 (iii) the parties to the suit;

6 (B) not later than the 15th business day after  
7 the date of the appointment, interview each person who has  
8 significant knowledge of the child's history and condition,  
9 including educators, child welfare service providers, and any  
10 foster parent of the child;

11 (C) seek to elicit in a developmentally  
12 appropriate manner the child's expressed objectives of  
13 representation;

14 (D) [~~(C)~~] consider the impact on the child in  
15 formulating the attorney's presentation of the child's expressed  
16 objectives of representation to the court;

17 (E) [~~(D)~~] investigate the facts of the case to  
18 the extent the attorney considers appropriate;

19 (F) [~~(E)~~] obtain and review copies of relevant  
20 records relating to the child as provided by Section 107.006;

21 (G) [~~(F)~~] participate in the conduct of the  
22 litigation to the same extent as an attorney for a party;

23 (H) [~~(G)~~] take any action consistent with the  
24 child's interests that the attorney considers necessary to expedite  
25 the proceedings;

26 (I) [~~(H)~~] encourage settlement and the use of  
27 alternative forms of dispute resolution; and

1                    (J) [~~(I)~~] review and sign, or decline to sign, a  
2 proposed or agreed order affecting the child;

3                    (2) must be trained in child advocacy or have  
4 experience determined by the court to be equivalent to that  
5 training; and

6                    (3) is entitled to:

7                    (A) request clarification from the court if the  
8 role of the attorney is ambiguous;

9                    (B) request a hearing or trial on the merits;

10                    (C) consent or refuse to consent to an interview  
11 of the child by another attorney;

12                    (D) receive a copy of each pleading or other  
13 paper filed with the court;

14                    (E) receive notice of each hearing in the suit;

15                    (F) participate in any case staffing concerning  
16 the child conducted by the Department of Family and Protective  
17 Services or a single source continuum contractor; and

18                    (G) attend all legal proceedings in the suit.

19                    (b) In addition to the duties required by Subsection (a), an  
20 attorney ad litem appointed for a child in a proceeding under  
21 Chapter 262, 263, or 264 shall:

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

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

25                    (3) for a child at least 17 [~~16~~] years of age:

26                    (A) advise the child of the child's right to  
27 request the court to authorize the child to consent to the child's

1 own medical care under Section 266.010; and

2 (B) ascertain whether the child has received the  
3 following documents:

4 (i) a certified copy of the child's birth  
5 certificate;

6 (ii) a social security card or a  
7 replacement social security card;

8 (iii) a driver's license or personal  
9 identification certificate under Chapter 521, Transportation Code;  
10 and

11 (iv) any other personal document the  
12 Department of Family and Protective Services or a single source  
13 continuum contractor determines appropriate; and

14 (4) for a child at least 13 years of age, ascertain  
15 whether the child has received a personal identification  
16 certificate under Chapter 521, Transportation Code [~~seek to elicit~~  
17 ~~in a developmentally appropriate manner the name of any adult,~~  
18 ~~particularly an adult residing in the child's community, who could~~  
19 ~~be a relative or designated caregiver for the child and immediately~~  
20 ~~provide the names of those individuals to the Department of Family~~  
21 ~~and Protective Services].~~

22 SECTION 3. Sections 107.004(d-1), (d-2), and (d-3), Family  
23 Code, are amended to read as follows:

24 (d-1) A meeting required by Subsection (d) must take place:

25 (1) at least 72 hours [~~a sufficient time~~] before the  
26 hearing to allow the attorney ad litem to prepare for the hearing in  
27 accordance with the child's expressed objectives of

1 representation; and

2 (2) in a private setting that allows for confidential  
3 communications between the attorney ad litem and the child or  
4 individual with whom the child ordinarily resides, as applicable.

5 (d-2) An attorney ad litem appointed to represent a child in  
6 the managing conservatorship of the Department of Family and  
7 Protective Services or a child who is the subject of a proceeding  
8 under Chapter 264 shall, at least 72 hours before each scheduled  
9 hearing under Chapter 263 or 264, determine whether the child's  
10 educational needs and goals have been identified and addressed.

11 (d-3) An attorney ad litem appointed to represent a child in  
12 the managing conservatorship of the Department of Family and  
13 Protective Services or a child who is the subject of a proceeding  
14 under Chapter 264 shall, at least once each month, [~~periodically~~  
15 ~~continue to~~] review the child's safety and well-being, including  
16 any effects of trauma to the child, and take appropriate action,  
17 including requesting a review hearing when necessary to address an  
18 issue of concern.

19 SECTION 4. Section 107.008, Family Code, is amended to read  
20 as follows:

21 Sec. 107.008. SUBSTITUTED JUDGMENT OF ATTORNEY FOR CHILD.

22 (a) An attorney ad litem appointed to represent a child or an  
23 attorney appointed in the dual role may determine that the child  
24 cannot meaningfully formulate the child's objectives of  
25 representation in a case because the child has an intellectual or  
26 developmental disability that causes the child to be incapable of:

27 (1) forming [~~lacks sufficient maturity to understand~~

1 ~~and form~~] an attorney-client relationship with the attorney;

2           (2) making reasonable judgments [~~despite appropriate~~  
3 ~~legal counseling, continues to express objectives of~~  
4 ~~representation that would be seriously injurious to the child~~]; or

5           (3) [~~for any other reason is incapable of making~~  
6 ~~reasonable judgments and~~] engaging in meaningful communication.

7           (b) An attorney ad litem or an attorney appointed in the  
8 dual role who determines that the child because of medical or  
9 developmental reasons cannot meaningfully formulate the child's  
10 expressed objectives of representation may present to the court a  
11 position that the attorney determines will serve the best interests  
12 of the child.

13           (c) If a guardian ad litem has been appointed for the child  
14 in a suit filed by a governmental entity requesting termination of  
15 the parent-child relationship or appointment of the entity as  
16 conservator of the child, an attorney ad litem who determines that  
17 the child cannot meaningfully formulate the child's expressed  
18 objectives of representation:

19           (1) shall consult with the guardian ad litem and~~[~~  
20 ~~without being bound by the guardian ad litem's opinion or~~  
21 ~~recommendation,~~] ensure that the guardian ad litem's opinion and  
22 basis for any recommendation regarding the best interests of the  
23 child are presented to the court; and

24           (2) may present to the court a position that the  
25 attorney determines will serve the best interests of the child.

26           SECTION 5. Section [107.011](#)(a), Family Code, is amended to  
27 read as follows:



1           (a) Except as otherwise provided by this subchapter, in a  
2 suit filed by a governmental entity seeking termination of the  
3 parent-child relationship or the appointment of a conservator for a  
4 child, the court shall appoint a guardian ad litem to represent the  
5 best interests of the child immediately after the filing of the  
6 petition but not later than 72 hours before the full adversary  
7 hearing.

8           SECTION 6. Section 107.012, Family Code, is amended to read  
9 as follows:

10           Sec. 107.012. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM  
11 FOR CHILD. In a suit filed by a governmental entity requesting  
12 termination of the parent-child relationship or to be named  
13 conservator of a child, the court shall appoint an attorney ad litem  
14 to represent the interests of the child immediately after the  
15 filing, but not later than 72 hours before the full adversary  
16 hearing, to ensure adequate representation of the child.

17           SECTION 7. Section 107.0131(a), Family Code, is amended to  
18 read as follows:

19           (a) An attorney ad litem appointed under Section 107.013 to  
20 represent the interests of a parent:

21                   (1) shall:

22                           (A) subject to Rules 4.02, 4.03, and 4.04, Texas  
23 Disciplinary Rules of Professional Conduct, and not later than the  
24 seventh business day [~~within a reasonable time~~] after the date of  
25 the appointment, interview:

26                                   (i) the parent, unless the parent's  
27 location is unknown;

1 (ii) each person who has significant  
2 knowledge of the case; and

3 (iii) the parties to the suit;

4 (B) investigate the facts of the case;

5 (C) to ensure competent representation at  
6 hearings, mediations, pretrial matters, and the trial on the  
7 merits:

8 (i) obtain and review copies of all court  
9 files in the suit during the attorney ad litem's course of  
10 representation; and

11 (ii) when necessary, conduct formal  
12 discovery under the Texas Rules of Civil Procedure or the discovery  
13 control plan;

14 (D) take any action consistent with the parent's  
15 interests that the attorney ad litem considers necessary to  
16 expedite the proceedings;

17 (E) encourage settlement and the use of  
18 alternative forms of dispute resolution;

19 (F) review and sign, or decline to sign, a  
20 proposed or agreed order affecting the parent;

21 (G) meet with the parent at least 72 hours before  
22 each court hearing [~~with the parent~~], unless the court:

23 (i) finds at that hearing that the attorney  
24 ad litem has shown good cause why the attorney ad litem's compliance  
25 is not feasible; or

26 (ii) on a showing of good cause, authorizes  
27 the attorney ad litem to comply by conferring with the parent, as

1 appropriate, by telephone or video conference;

2 (H) abide by the parent's objectives for  
3 representation;

4 (I) become familiar with the American Bar  
5 Association's standards of practice for attorneys who represent  
6 parents in abuse and neglect cases; and

7 (J) complete at least three hours of continuing  
8 legal education relating to representing parents in child  
9 protection cases as described by Subsection (b) as soon as  
10 practicable after the attorney ad litem is appointed, unless the  
11 court finds that the attorney ad litem has experience equivalent to  
12 that education; and

13 (2) is entitled to:

14 (A) request clarification from the court if the  
15 role of the attorney ad litem is ambiguous;

16 (B) request a hearing or trial on the merits;

17 (C) consent or refuse to consent to an interview  
18 of the parent by another attorney;

19 (D) receive a copy of each pleading or other  
20 paper filed with the court;

21 (E) receive notice of each hearing in the suit;

22 (F) participate in any case staffing conducted by  
23 the Department of Family and Protective Services in which the  
24 parent is invited to participate, including, as appropriate, a case  
25 staffing to develop a family plan of service, a family group  
26 conference, a permanency conference, a mediation, a case staffing  
27 to plan for the discharge and return of the child to the parent, and

1 any other case staffing that the department determines would be  
2 appropriate for the parent to attend, but excluding any internal  
3 department staffing or staffing between the department and the  
4 department's legal representative; and

5 (G) attend all legal proceedings in the suit.

6 SECTION 8. The changes in law made by this Act apply only to  
7 a suit affecting the parent-child relationship filed on or after  
8 the effective date of this Act. A suit affecting the parent-child  
9 relationship filed before that date is governed by the law in effect  
10 on the date the suit was filed, and that law is continued in effect  
11 for that purpose.

12 SECTION 9. This Act takes effect September 1, 2023.