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H.B. No. 2794

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

1 manner the name of any adult, particularly an adult residing in the
2 child's community, who could be a relative or designated caregiver
3 for the child and immediately provide the names of those
4 individuals to the Department of Family and Protective Services.

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

8 (a) A [~~In a suit filed by a governmental entity requesting~~
9 ~~termination of the parent-child relationship or appointment of the~~
10 ~~entity as conservator of the child, the~~] court may appoint a
11 charitable organization composed of volunteer advocates whose
12 charter mandates the provision of services to allegedly abused and
13 neglected children or an individual who has received the court's
14 approved training regarding abused and neglected children and who
15 has been certified by the court to appear at court hearings as a
16 guardian ad litem for the child or as a volunteer advocate for the
17 child in:

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

21 (2) a suit filed by a governmental entity under
22 Section [264.203](#).

23 (a-1) A court that appoints a guardian ad litem under
24 Subsection (a) shall prioritize appointments in suits described by
25 Subsection (a)(1). A court may not appoint a guardian ad litem in a
26 suit described by Subsection (a)(2) unless, at the time the court
27 considers the appointment, each suit before the court described by

1 Subsection (a)(1) for which a guardian ad litem may be appointed has
2 received an appointment.

3 (b) In a suit other than a suit described by Subsection (a)
4 [filed by a governmental entity requesting termination of the
5 parent-child relationship or appointment of the entity as
6 conservator of the child], the court may appoint a charitable
7 organization composed of volunteer advocates whose training
8 provides for the provision of services in private custody disputes
9 or a person who has received the court's approved training
10 regarding the subject matter of the suit and who has been certified
11 by the court to appear at court hearings as a guardian ad litem for
12 the child or as a volunteer advocate for the child. A person
13 appointed under this subsection is not entitled to fees under
14 Section 107.023.

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

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

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

27 (2) an attorney appointed in a dual role.

1 (g-2) The court may not appoint a guardian ad litem in a suit
2 filed by a governmental entity if an attorney is appointed in the
3 dual role unless the court appoints another person to serve as
4 guardian ad litem for the child and restricts the role of the
5 attorney to acting as an attorney ad litem for the child.

6 (g-3) The court may appoint an attorney to serve as guardian
7 ad litem for a child without appointing the attorney to serve in the
8 dual role only if the attorney is specifically appointed to serve
9 only in the role of guardian ad litem. An attorney appointed solely
10 as a guardian ad litem:

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

13 (2) may not:

14 (A) perform legal services in the case; or

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

19 (g-4) The court may appoint the person appointed as guardian
20 ad litem for the child under Section 51.11 to also serve as the
21 guardian ad litem for the child under this section if the person is
22 qualified under Chapter 107 to serve as guardian ad litem.

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

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

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

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

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

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

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

12 Sec. 264.601. DEFINITIONS. In this subchapter:

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

15 (A) who is:

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

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

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

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

24 (A) provides advocacy services to allegedly
25 abused or neglected children with the goal of promoting [~~obtaining~~

26 ~~a permanent placement for a child that is in]~~ the child's best
27 interest; and

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

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

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

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

11 (a) A person is eligible for a contract under Section
12 264.602 only if the person is a public or private nonprofit entity
13 that operates a volunteer advocate program that:

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

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

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

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

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

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

1 under Section 264.602:

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

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

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

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

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

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

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

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

24 (3) provide as a minimum:

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

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

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

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

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

11 (F) referral services to existing community
12 services;

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

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

17 (I) compliance with the standards adopted under
18 Section [264.602](#).

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

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