

1-1 By: Johnson S.B. No. 2109
1-2 (In the Senate - Filed March 9, 2023; March 21, 2023, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 4, 2023, reported favorably by the following vote: Yeas 4,
1-5 Nays 0; April 4, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10			X	
1-11	X			
1-12	X			

1-13 A BILL TO BE ENTITLED
1-14 AN ACT

1-15 relating to the appointment of a guardian ad litem in certain suits
1-16 filed by the Department of Family and Protective Services.

1-17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-18 SECTION 1. Section 107.002(b-1), Family Code, is amended to
1-19 read as follows:

1-20 (b-1) In addition to the duties required by Subsection (b),
1-21 a guardian ad litem appointed for a child in a proceeding under
1-22 Chapter 262 or 263 or Section 264.203 shall:

1-23 (1) review the medical care provided to the child;

1-24 (2) in a developmentally appropriate manner, seek to
1-25 elicit the child's opinion on the medical care provided;

1-26 (3) for a child at least 16 years of age, ascertain
1-27 whether the child has received the following documents:

1-28 (A) a certified copy of the child's birth
1-29 certificate;

1-30 (B) a social security card or a replacement
1-31 social security card;

1-32 (C) a driver's license or personal
1-33 identification certificate under Chapter 521, Transportation Code;
1-34 and

1-35 (D) any other personal document the Department of
1-36 Family and Protective Services determines appropriate; and

1-37 (4) seek to elicit in a developmentally appropriate
1-38 manner the name of any adult, particularly an adult residing in the
1-39 child's community, who could be a relative or designated caregiver
1-40 for the child and immediately provide the names of those
1-41 individuals to the Department of Family and Protective Services.

1-42 SECTION 2. Sections 107.031(a) and (b), Family Code, are
1-43 amended to read as follows:

1-44 (a) ~~A [In a suit filed by a governmental entity requesting~~
1-45 ~~termination of the parent-child relationship or appointment of the~~
1-46 ~~entity as conservator of the child, the]~~ court may appoint a
1-47 charitable organization composed of volunteer advocates whose
1-48 charter mandates the provision of services to allegedly abused and
1-49 neglected children or an individual who has received the court's
1-50 approved training regarding abused and neglected children and who
1-51 has been certified by the court to appear at court hearings as a
1-52 guardian ad litem for the child or as a volunteer advocate for the
1-53 child in:

1-54 (1) a suit filed by a governmental entity requesting
1-55 termination of the parent-child relationship or appointment of the
1-56 entity as conservator of the child; or

1-57 (2) a suit filed by a governmental entity under
1-58 Section 264.203.

1-59 (b) In a suit other than a suit described by Subsection (a)
1-60 ~~[filed by a governmental entity requesting termination of the~~
1-61 ~~parent-child relationship or appointment of the entity as~~

2-1 ~~conservator of the child],~~ the court may appoint a charitable
2-2 organization composed of volunteer advocates whose training
2-3 provides for the provision of services in private custody disputes
2-4 or a person who has received the court's approved training
2-5 regarding the subject matter of the suit and who has been certified
2-6 by the court to appear at court hearings as a guardian ad litem for
2-7 the child or as a volunteer advocate for the child. A person
2-8 appointed under this subsection is not entitled to fees under
2-9 Section 107.023.

2-10 SECTION 3. Section 264.203, Family Code, is amended by
2-11 adding Subsections (g-1), (g-2), (g-3), and (g-4) to read as
2-12 follows:

2-13 (g-1) The court may appoint a guardian ad litem to represent
2-14 the best interests of the child immediately after the filing of the
2-15 petition but before the hearing. The guardian ad litem for the
2-16 child shall have the powers and duties of a guardian ad litem for a
2-17 child under Chapter 107. The guardian ad litem appointed for the
2-18 child may be:

2-19 (1) a charitable organization composed of volunteer
2-20 advocates or an individual volunteer advocate appointed under
2-21 Subchapter C;

2-22 (2) an adult with the competence, training, and
2-23 expertise the court determines is sufficient to represent the best
2-24 interests of the child; or

2-25 (3) an attorney appointed in the dual role.

2-26 (g-2) The court may not appoint a guardian ad litem in a suit
2-27 filed by a governmental entity if an attorney is appointed in the
2-28 dual role unless the court appoints another person to serve as
2-29 guardian ad litem for the child and restricts the role of the
2-30 attorney to acting as an attorney ad litem for the child.

2-31 (g-3) The court may appoint an attorney to serve as guardian
2-32 ad litem for a child without appointing the attorney to serve in the
2-33 dual role only if the attorney is specifically appointed to serve
2-34 only in the role of guardian ad litem. An attorney appointed solely
2-35 as a guardian ad litem:

2-36 (1) may take only those actions that may be taken by a
2-37 nonattorney guardian ad litem; and

2-38 (2) may not:

2-39 (A) perform legal services in the case; or

2-40 (B) take any action that is restricted to a
2-41 licensed attorney, including engaging in discovery other than as a
2-42 witness, making opening and closing statements, or examining
2-43 witnesses.

2-44 (g-4) The court may appoint the person appointed as guardian
2-45 ad litem for the child under Section 51.11 to also serve as the
2-46 guardian ad litem for the child under this section if the person is
2-47 qualified under Chapter 107 to serve as guardian ad litem.

2-48 SECTION 4. Section 264.601, Family Code, is amended to read
2-49 as follows:

2-50 Sec. 264.601. DEFINITIONS. In this subchapter:

2-51 (1) "Allegedly abused ~~[Abused]~~ or neglected child"
2-52 means a child:

2-53 (A) who is:

2-54 (i) ~~[(A)]~~ the subject of a suit affecting
2-55 the parent-child relationship filed by a governmental entity; and

2-56 (ii) ~~[(B)]~~ under the control or supervision
2-57 of the department; or

2-58 (B) who is the subject of a suit filed by a
2-59 governmental entity under Section 264.203.

2-60 (2) "Volunteer advocate program" means a
2-61 volunteer-based, nonprofit program that:

2-62 (A) provides advocacy services to allegedly
2-63 abused or neglected children with the goal of promoting ~~[obtaining~~
2-64 a permanent placement for a child that is in] the child's best
2-65 interest; and

2-66 (B) complies with recognized standards for
2-67 volunteer advocate programs.

2-68 SECTION 5. Section 264.602(a), Family Code, is amended to
2-69 read as follows:

3-1 (a) The statewide organization with which the commission
3-2 contracts under Section 264.603 shall contract for services with
3-3 eligible volunteer advocate programs to provide advocacy services
3-4 to allegedly abused or neglected children.

3-5 SECTION 6. Section 264.604(a), Family Code, is amended to
3-6 read as follows:

3-7 (a) A person is eligible for a contract under Section
3-8 264.602 only if the person is a public or private nonprofit entity
3-9 that operates a volunteer advocate program that:

3-10 (1) uses individuals appointed as volunteer advocates
3-11 or guardians ad litem by the court to provide for the needs of
3-12 allegedly abused or neglected children;

3-13 (2) has provided court-appointed advocacy services
3-14 for at least six months;

3-15 (3) provides court-appointed advocacy services for at
3-16 least 10 children each month; and

3-17 (4) has demonstrated that the program has local
3-18 judicial support.

3-19 SECTION 7. Section 264.606, Family Code, is amended to read
3-20 as follows:

3-21 Sec. 264.606. CRITERIA FOR AWARD OF CONTRACTS. The
3-22 statewide organization with which the commission contracts under
3-23 Section 264.603 shall consider the following in awarding a contract
3-24 under Section 264.602:

3-25 (1) the volunteer advocate program's eligibility for
3-26 and use of funds from local, state, or federal governmental
3-27 sources, philanthropic organizations, and other sources;

3-28 (2) community support for the volunteer advocate
3-29 program as indicated by financial contributions from civic
3-30 organizations, individuals, and other community resources;

3-31 (3) whether the volunteer advocate program provides
3-32 services that promote the best interest of children [~~encourage the~~
3-33 ~~permanent placement of children through reunification with their~~
3-34 ~~families or timely placement with an adoptive family~~]; and

3-35 (4) whether the volunteer advocate program has the
3-36 endorsement and cooperation of the local juvenile court system.

3-37 SECTION 8. Section 264.607, Family Code, is amended to read
3-38 as follows:

3-39 Sec. 264.607. CONTRACT REQUIREMENTS. The commission shall
3-40 require that a contract under Section 264.602 require the volunteer
3-41 advocate program to:

3-42 (1) make quarterly and annual financial reports on a
3-43 form provided by the commission;

3-44 (2) cooperate with inspections and audits that the
3-45 commission makes to ensure service standards and fiscal
3-46 responsibility; and

3-47 (3) provide as a minimum:

3-48 (A) independent and factual information in
3-49 writing to the court and to counsel for the parties involved
3-50 regarding the child;

3-51 (B) advocacy through the courts for the best
3-52 interest of the child [~~permanent home placement and rehabilitation~~
3-53 ~~services for the child~~];

3-54 (C) monitoring of the child to ensure the safety
3-55 of the child and to prevent unnecessary movement of the child to
3-56 multiple temporary placements;

3-57 (D) reports in writing to the presiding judge and
3-58 to counsel for the parties involved;

3-59 (E) community education relating to child abuse
3-60 and neglect;

3-61 (F) referral services to existing community
3-62 services;

3-63 (G) a volunteer recruitment and training
3-64 program, including adequate screening procedures for volunteers;

3-65 (H) procedures to assure the confidentiality of
3-66 records or information relating to the child; and

3-67 (I) compliance with the standards adopted under
3-68 Section 264.602.

3-69 SECTION 9. The changes in law made by this Act apply to a

4-1 suit filed by a governmental entity that is pending in a trial court
4-2 on or filed on or after the effective date of this Act.
4-3 SECTION 10. This Act takes effect September 1, 2023.

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