

BILL ANALYSIS

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C.S.H.B. 3003
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Court-appointed legal representation in child protection cases varies around the state, but informed parties note that it is primarily accomplished through court appointments of private or solo practitioners. The parties note that there are other models of representation around the state and nation, such as public defender or managed assigned counsel programs, and that each of these models has advantages and disadvantages. The parties contend that it would be beneficial for counties to be able to rely on statutory authority and guidance for establishing and operating such programs. H.B. 3003 seeks to provide for this authority and guidance. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 3003 amends current law relating to the appointment of counsel in certain suits affecting the parent-child relationship.

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 Chapter 107, Family Code, by adding Subchapters E and F, as follows:

SUBCHAPTER E. OFFICE OF CHILD REPRESENTATION AND OFFICE OF PARENT REPRESENTATION

Sec. 107.061. Defines "governmental entity" for purposes of this subchapter.

Sec. 107.062. **APPLICABILITY.** Provides that this subchapter applies to a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child in which appointment of an attorney is required under Section 107.012 (Mandatory Appointment of Attorney Ad Litem for Child) or 107.013 (Mandatory Appointment of Attorney Ad Litem for Parent).

Sec. 107.063. **NONPROFIT FUNDING.** Provides that this subchapter does not limit or prevent a nonprofit corporation from receiving and using money obtained from other entities to provide legal representation and services as authorized by this subchapter.

Sec. 107.064. **OFFICE OF CHILD REPRESENTATION.** Provides that an office of child representation is an entity that uses public money to provide legal representation and services for a child in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which appointment is mandatory for a child under Section 107.012.

Sec. 107.065. **OFFICE OF PARENT REPRESENTATION.** Provides that an office of parent representation is an entity that uses public money to provide legal representation and services for a parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which appointment is mandatory for a parent under Section 107.013.

Sec. 107.066. CREATION OF OFFICE OF CHILD REPRESENTATION OR OFFICE OF PARENT REPRESENTATION. (a) Authorizes an office described by Section 107.064 or 107.065 to be a governmental entity or a nonprofit corporation operating under a written agreement with a governmental entity, other than an individual judge or court.

(b) Authorizes the commissioners court of any county, on written approval of a judge of a statutory court or a district court having family law jurisdiction in a county, to create an office of child representation, an office of parent representation, or both offices by establishing a department of the county or designating under a contract a nonprofit corporation to perform the duties of an office.

(c) Authorizes the commissioners courts of two or more counties to enter into a written agreement to jointly create and jointly fund a regional office of child representation, a regional office of parent representation, or both regional offices.

(c) Requires the commissioners court, in creating an office of child representation or office of parent representation under this section, to specify or the commissioners courts to jointly specify, as applicable:

(1) the duties of the office;

(2) the types of cases to which the office may be appointed under this chapter and the courts in which an attorney employed by the office may be required to appear;

(3) if the office is a nonprofit corporation, the term during which the contract designating the office is effective and how that contract may be renewed on expiration of the term; and

(4) if an oversight board is established under Section 107.072 for the office, the powers and duties that have been delegated to the oversight board.

Sec. 107.067. NONPROFIT AS OFFICE. (a) Requires the commissioners court or commissioners courts, as applicable, before contracting with a nonprofit corporation to serve as an office of child representation or office of parent representation, to solicit proposals for the office.

(b) Requires the commissioners court or commissioners courts, as applicable, after considering each proposal for an office of child representation or office of parent representation submitted by a nonprofit corporation, to select a proposal that reasonably demonstrates that the office will provide adequate quality representation for children for whom appointed counsel is required under Section 107.012 or for parents for whom appointed counsel is required under Section 107.013, as applicable.

(c) Prohibits the total cost of the proposal from being the sole consideration in selecting a proposal.

Sec. 107.068. PLAN OF OPERATION FOR OFFICE. Requires the applicable commissioners court or commissioners courts to require a written plan of operation from an entity serving as an office of child representation or office of parent representation. Requires that the plan include:

(1) a budget for the office, including salaries;

(2) a description of each personnel position, including the chief counsel position;

- (3) the maximum allowable caseloads for each attorney employed by the office;
- (4) provisions for training personnel and attorneys employed by the office;
- (5) a description of anticipated overhead costs for the office;
- (6) policies regarding the use of licensed investigators and expert witnesses by the office; and
- (7) a policy to ensure that the chief of the office and other attorneys employed by the office do not provide representation to a child, a parent, or an alleged father, as applicable, if doing so would create a conflict of interest.

Sec. 107.069. OFFICE PERSONNEL. (a) Requires that an office of child representation or office of parent representation be directed by a chief counsel who:

- (1) is a member of the State Bar of Texas;
- (2) has practiced law for at least three years; and
- (3) has substantial experience in the practice of child welfare law.

(b) Authorizes an office of child representation or office of parent representation to employ attorneys, licensed investigators, licensed social workers, and other personnel necessary to perform the duties of the office as specified by the commissioners court or commissioners courts.

(c) Requires an attorney for the office of child representation or office of parent representation to comply with any applicable continuing education and training requirements of Sections 107.004 (Additional Duties of Attorney Ad Litem for Child) and 107.0131 (Powers and Duties of Attorney Ad Litem for Parent) before accepting representation.

(d) Prohibits the chief counsel and other attorneys employed by an office of child representation or office of parent representation, except as authorized by this chapter, from:

- (1) engaging in the private practice of child welfare law; or
- (2) accepting anything of value not authorized by this chapter for services rendered under this chapter.

(e) Authorizes a judge to remove from a case a person who violates Subsection (d).

Sec. 107.070. APPOINTMENTS IN COUNTY IN WHICH OFFICE CREATED. (a) Requires a court in a county, if there is an office of child representation or office of parent representation serving that county, to appoint an attorney from the office in a suit filed in the county by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child, unless there is a conflict of interest or other reason to appoint a different attorney from the list maintained by the court of attorneys qualified for appointment under Section 107.012 or 107.013.

(b) Prohibits an office of child representation or office of parent representation from accepting an appointment if:

- (1) a conflict of interest exists;
- (2) the office has insufficient resources to provide adequate representation;
- (3) the office is incapable of providing representation in accordance with the rules of professional conduct; or
- (4) the appointment would require one or more attorneys at the office to have a caseload that exceeds the maximum allowable caseload; or
- (5) the office shows other good cause for not accepting the appointment.

(c) Authorizes an office of parent representation to investigate the financial condition of any person the office is appointed to represent under Section 107.013. Requires the office to report the results of the investigation to the appointing judge. Authorizes the judge to hold a hearing to determine if the person is indigent and is entitled to appointment of representation under Section 107.013.

(d) Entitles the attorney, if it is necessary to appoint an attorney who is not employed by an office of child representation or office of parent representation for one or more parties, to the compensation provided by Section 107.015 (Attorney Fees).

Sec. 107.071. FUNDING OF OFFICE. Entitles an office of child representation or office of parent representation to receive money for personnel costs and expenses incurred in operating as an office in amounts set by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the office serves more than one county.

Sec. 107.072. OVERSIGHT BOARD. (a) Authorizes the commissioners court of a county or the commissioners courts of two or more counties to establish an oversight board for an office of child representation or office of parent representation created in accordance with this subchapter.

(b) Requires a commissioners court that establishes an oversight board under this section to appoint members of the board. Provides that members may include one or more of the following:

- (1) an attorney with substantial experience in child welfare law;
- (2) the judge of a trial court having family law jurisdiction in the county or counties for which the office was created;
- (3) a county commissioner; and
- (4) a county judge.

(c) Authorizes a commissioners court to delegate to the oversight board any power or duty of the commissioners court to provide oversight of the office of child representation or office of parent representation under this subchapter, including:

- (1) recommending selection and removal of a chief counsel of the office;
- (2) setting policy for the office; and
- (3) developing a budget proposal for the office.

(d) Prohibits an oversight board established under this section from accessing privileged or confidential information.

(e) Provides that a judge who serves on an oversight board under this section has judicial immunity in a suit arising from the performance of a power or duty described by Subsection (c).

SUBCHAPTER F. MANAGED ASSIGNED COUNSEL PROGRAM FOR THE REPRESENTATION OF CERTAIN CHILDREN AND PARENTS

Sec. 107.101. DEFINITIONS. Defines “governmental entity” and “program.”

Sec. 107.102. MANAGED ASSIGNED COUNSEL PROGRAM. (a) Authorizes a managed assigned counsel program (program) to be operated with public money for the purpose of appointing counsel to provide legal representation and services for a child or parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which appointment is mandatory for a child under Section 107.012 or for a parent under Section 107.013.

(b) Authorizes the program to be operated by a governmental entity, nonprofit corporation, or local bar association under a written agreement with a governmental entity, other than an individual judge or court.

Sec. 107.103. CREATION OF MANAGED ASSIGNED COUNSEL PROGRAM. (a) Authorizes the commissioners court of a county, on written approval of a judge of a statutory county court or a district court having family law jurisdiction in the county, to appoint a governmental entity, nonprofit corporation, or local bar association to operate a program for the legal representation of:

(1) a child in a suit in which appointment is mandatory under Section 107.012; or

(2) a parent in a suit in which appointment is mandatory under Section 107.013.

(b) Authorizes the commissioners courts of two or more counties to enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a program that provides legal representation for child, parents, or both children and parents.

(c) Requires the commissioners court, in appointing an entity to operate a program under this subchapter, to specify or the commissioners courts to jointly specify:

(1) the types of cases in which the program may appoint counsel under this section, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

Sec. 107.104. PLAN FOR PROGRAM REQUIRED. Requires the commissioners court or commissioners courts to require a written plan of operation from an entity operating a program under this subchapter. Requires that the plan of operation include:

(1) a budget for the program, including salaries;

(2) a description of each personnel position, including the program's director;

- (3) the maximum allowable caseload for each attorney appointed under the program;
- (4) provisions for training personnel of the program and attorneys appointed under the program;
- (5) a description of anticipated overhead costs for the program;
- (6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;
- (7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and
- (8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney.

Sec. 107.105. PROGRAM DIRECTOR; PERSONNEL. (a) Requires that a program under this subchapter, unless a program uses a review committee appointed under Section 107.106, be directed by a person who:

- (1) is a member of the State Bar of Texas;
- (2) has practiced law for at least three years; and
- (3) has substantial experience in the practice of child welfare law.

(b) Authorizes a program to employ personnel necessary to perform the duties of the program and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this section.

Sec. 107.106. REVIEW COMMITTEE. (a) Authorizes the governmental entity, nonprofit corporation, or local bar association operating a program to appoint a review committee of three or more individuals to approve attorneys for inclusion on the program's public appointment list.

(b) Provides that each member of the committee:

- (1) must meet the requirements described by Section 107.105(a) for the program director;
- (2) may not be employed as a prosecutor; and
- (3) may not be included on or apply for inclusion on the public appointment list.

Sec. 107.107. APPOINTMENT FROM PROGRAM'S PUBLIC APPOINTMENT LIST. (a) Requires the judge of a county served by a program to make any appointment required under Section 107.012 or 107.013 in a suit filed in the county by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child from the program's public appointment list, unless there is a conflict of interest or other reason to appoint a different attorney from the list maintained by the court of attorneys qualified for appointment under section 107.012 or 107.013.

(b) Requires that the program's public appointment list from which an attorney is appointed under this section contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets any applicable requirements, including any education and training programs required under Sections 107.004 and 107.0131; and

(3) is approved by the program director or review committee, as applicable.

Sec. 107.108. FUNDING OF PROGRAM. (a) Entitles a program to receive money for personnel costs and expenses incurred in amounts set by the commissioners court and paid out of the appropriate county fund or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(b) Entitles an attorney appointed under the program to reasonable fees as provided by Section 107.015.

SECTION 2. Effective date: September 1, 2015.