

BILL ANALYSIS

H.B. 3003
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3003 amends the Family Code to authorize the commissioners court of any county, on written approval of a judge of a statutory county court or a district court having family law jurisdiction in the county, to create an office of family representation by establishing a department of the county or designating under a contract a nonprofit corporation to perform the duties of an office. The bill establishes that an office of family representation is an entity that uses public money 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 or parent. The bill authorizes an office 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. The bill specifies that its provisions do 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 the bill.

H.B. 3003 authorizes the commissioners courts of two or more counties to enter into a written agreement to jointly create and jointly fund a regional office. The bill requires the commissioners court, in creating such an office, to specify the duties of the office; the types of cases to which the office may be appointed and the courts in which an attorney employed by the office may be required to appear; 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 if an oversight board is established for the office, the powers and duties that have been delegated to the oversight board.

H.B. 3003 requires the commissioners court, before contracting with a nonprofit corporation to serve as an office, to solicit proposals for the office and, after considering each proposal for an office submitted by a nonprofit corporation, to select a proposal that reasonably demonstrates that the office will provide adequate quality representation for children and parents for whom appointed counsel is required. The bill prohibits the total cost of the proposal from being the sole consideration in selecting a proposal. The bill requires the applicable commissioners court to require a written plan of operation from an entity serving as an office and sets out the required contents of the plan.

H.B. 3003 requires an office to be directed by a chief counsel who is a member of the State Bar of Texas, has practiced law for at least three years, and has substantial experience in the practice of child welfare law. The bill authorizes an office 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. The bill requires an attorney for the office to comply with any applicable continuing education and training requirements before accepting representation. The bill prohibits the chief counsel and other attorneys employed by an office, with certain exceptions, from engaging in the private practice of child welfare law or accepting anything of value for services rendered. The bill authorizes a judge to remove from a case a person who violates this prohibition.

H.B. 3003 requires a court in a county for which there is an office serving the 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. The bill prohibits an office from accepting an appointment if a conflict of interest exists, the office has insufficient resources to provide adequate representation, the office is incapable of providing representation in accordance with the rules of professional conduct, or the office shows other good cause for not accepting the appointment. The bill authorizes an office to investigate the financial condition of any person the office is appointed to represent under statutory provisions relating to the mandatory appointment of an attorney ad litem for a parent. The bill requires the office to report the results of the investigation to the appointing judge, who may hold a hearing to determine if the person is indigent and entitled to appointment of representation. The bill entitles an attorney, if it is necessary to appoint an attorney who is not employed by an office for one or more parties, to the compensation provided by statutory provisions relating to attorney fees.

H.B. 3003 entitles an office 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. The bill requires any fees ordered by the court under statutory provisions relating to attorney fees to be paid by a party to be paid to the office and used for attorney salaries and other administrative costs. The bill authorizes the commissioners court of a county or the commissioners courts of two or more counties to establish an oversight board for an office created under the bill. The bill requires a commissioners court that establishes an oversight board to appoint members of the board which may include an attorney with substantial experience in child welfare law, the judge of a trial court having family law jurisdiction in the county or counties for which the office was created, a county commissioner, and a county judge. The bill authorizes a commissioners court to delegate to the oversight board any power or duty of the commissioners court to provide oversight of the office including recommending selection and removal of a chief counsel of the office, setting policy for the office, and developing a budget proposal for the office. The bill prohibits such an oversight board from accessing privileged or confidential information.

H.B. 3003 authorizes a managed assigned counsel program to be operated with public money 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, 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. The bill 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 managed assigned counsel program. The bill 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. The bill requires the commissioners court, in appointing an entity to operate the program, to specify the types of cases in which the program may appoint counsel, the courts in which the counsel appointed by the program may be required to appear, the term of any agreement establishing a program, and how the agreement may be terminated or renewed. The bill requires the commissioners court to require a written plan of operation from an entity operating such a program and sets out the required contents of the plan.

H.B. 3003 requires a managed assigned counsel program, unless the program uses a review committee, to be directed by a person who is a member of the State Bar of Texas, has practiced law for at least three years, and has substantial experience in the practice of child welfare law. The bill 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. The bill 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. The bill sets out the committee member qualifications, which are the same as those for the program director. The bill prohibits each member of the committee from being employed as a prosecutor and from being included on or applying for inclusion on the public appointment list.

H.B. 3003 requires the judge of a county served by a program to make any appointment required under statutory provisions relating to the mandatory appointment of an attorney ad litem for a parent or child 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. The bill requires the program's public appointment list from which an attorney is appointed to contain the names of qualified attorneys, each of whom applies to be included on the list; meets any applicable requirements, including any required education and training programs; and is approved by the program director or review committee, as applicable. The bill 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. The bill entitles an attorney appointed under the program to reasonable fees as provided by statutory provisions relating to attorney fees.

EFFECTIVE DATE

September 1, 2015.