

SUBJECT: Responsibilities and privileges of guardians ad litem

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 8 ayes — Goodman, Staples, J. Jones, McClendon, McReynolds, A. Reyna, Smith, Williams

0 nays

1 absent — Naishtat

SENATE VOTE: On final passage, March 25 — 30-0

WITNESSES: (*On House companion, HB 848*)
For — None

Against — None

On — Howard G. Baldwin, Jr., Department of Protective and Regulatory Services; Cynthia Bryant

BACKGROUND
:

In suits to terminate the parent-child relationship, a court must appoint a guardian ad litem — “for the purposes of the suit”— to represent the interest of the child unless the child is the petitioner, an attorney ad litem has been appointed for the child, or the court finds that the interests of the child will be represented adequately by a party to the suit. In any other suit, the court may appoint a guardian ad litem.

In suits filed by a governmental entity requesting that the parent-child relationship be terminated or that it be named conservator of a child, the court must appoint an attorney ad litem to represent the interests of the child and may appoint a volunteer advocate for the child.

DIGEST: SB 349 would amend Family Code provisions addressing guardians ad litem, attorneys ad litem, and volunteer advocates.

In a suit filed by a governmental entity to terminate the parent-child relationship or be named conservator, the court would have to appoint a

guardian ad litem to represent the best interests of the child. The guardian would have to be appointed immediately after the petition was filed. The guardian would have to interview the child, if four years or older, within a reasonable time after being appointed and other individuals likely to have significant knowledge of the child's history and condition.

The guardian ad litem could be an attorney, a volunteer advocate, or another adult having the competence, training and expertise determined by the court to be sufficient to represent the best interests of the child. The guardian ad litem would not be a party to the suit but would be entitled to conduct an investigation, obtain and review records on the child, participate in case staffings by an authorized agency, be notified of and attend all legal proceedings in the case, review and act on any agreed order affecting the child, and testify in court on recommendations on the best interest of the child, unless the guardian also was the attorney ad litem.

A guardian ad litem would not be liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem unless the recommendation or opinion was wilfully wrongful, given with conscious indifference or reckless disregard to the safety of another, given in bad faith or with malice, or grossly negligent.

SB 349 also would require that an attorney appointed as both attorney ad litem and guardian ad litem for a child become familiar with the American Bar Association's standards of practice for lawyers who represent child in abuse and neglect cases, and comply with the requirements of the Texas Disciplinary Rules of Professional Conduct. An attorney who determined that performing both roles would cause a conflict would have to withdraw as the child's guardian ad litem, continue to serve as the attorney ad litem, and request appointment of a new guardian ad litem for the child without revealing the reason a new appointment was required.

A party to a proceeding who objected to the selection of the guardian ad litem or attorney ad litem would have to file a written motion stating the grounds for the belief the person appointed lacked objectivity or was failing to fulfill the ad litem responsibilities. SB 349 would change the standard for removal of the ad litem to whether the court found the objection to be justifiable, rather than reasonable.

A court-certified volunteer advocate appointed for the child could also be appointed as the child's guardian ad litem. The attorney general would be required to adopt standards for local volunteer advocate programs.

SB 349 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

SB 349 would promote better representation of children's interests by explicitly authorizing guardians ad litem to conduct investigations and obtain copies of the child's relevant medical, psychological and school records and entitling them to copies of pleadings, notice of and attendance at hearings, and the right to review and sign or decline to sign any agreed orders affecting the child. The effectiveness of guardians ad litem also would be enhanced by requiring them to interview, within a reasonable time, the child and other individuals likely to have significant knowledge of the child's history and condition.

The bill would appropriately protect guardians ad litem acting in good faith from civil damages arising from their recommendations or opinions. At the same time, it would protect the public by holding guardians ad litem responsible if their recommendations were wilfully wrongful, given with conscious indifference or reckless disregard, given in bad faith or with malice, or grossly negligent. It also would set needed guidelines to address the potential conflicts faced by an attorney ad litem who was also appointed as guardian ad litem.

Furthermore, SB 349 would make it clear that courts could appoint a Court Appointed Special Advocate (CASA) volunteer as a guardian ad litem. In addition, it would improve operation of volunteer advocate programs by requiring the attorney general to adopt standards for those programs.

**OPPONENTS
SAY:**

No apparent opposition.