

- SUBJECT:** Distribution of child support payments to a guardian ad litem
- COMMITTEE:** Judiciary — committee substitute recommended
- VOTE:** 8 ayes — Hartnett, Hughes, Alonzo, Gonzales, Hopson, Solis, Straus, Van Arsdale
- 0 nays
- 1 absent — Keel
- WITNESSES:** For — W.K. Bo Brown, Robert T. O'Donnell
- Against — None
- On — Kathy Shafer, Office of the Attorney General - Child Support Division
- BACKGROUND:** In Texas, the Office of Attorney General (OAG) is the state agency authorized to collect and distribute child support payments under Title IV-D of the federal Social Security Act. Within two business days of the receipt of a child support payment, the OAG is required to distribute the payment to the obligee.
- Although neither specifically authorized nor prohibited in current statute, judges in some parts of the state have appointed individual guardians ad litem to receive, disburse, and monitor child support payments through divorce decrees or other orders authorized by the parties involved. A custodial parent also may appoint a guardian ad litem to serve this function.
- DIGEST:** CSHB 1238 would allow a signature on a final order affecting the parent-child relationship that designated an individual or entity to receive, disburse, or monitor child support payments, also to serve as written consent to have the OAG disburse child support payments to that individual or entity. The individual or entity then could deduct an authorized fee before disbursing the payment to the Title IV-D agency or the obligee.

The bill would take effect on September 1, 2005, and would apply to funds disbursed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1238 would facilitate the use of guardians ad litem to receive, disburse, and monitor child support payments. In jurisdictions allowing a private entity to serve as a guardian ad litem, child support payment compliance has risen dramatically to about 80 percent. Many judges have found the use of guardians ad litem to be the most effective means to enforce child support payments because it takes the responsibility of collecting payments off the custodial parent and also speeds up the collection process. When a payment is late, a parent usually must go through the OAG to collect payments. Because the OAG has a large caseload, it takes that agency longer than it would for a guardian ad litem to collect a payment. The bill would facilitate this process by clarifying that a signature on the divorce decree or other order providing a guardian ad litem for child support would serve as permission from the obligee to have payments sent directly to the guardian ad litem.

Sending payments on behalf of a parent to the guardian ad litem would not jeopardize federal funding. The federal Department of Health and Human Services, which oversees the Office of Child Support Enforcement, has stated that federal law does not preclude states from sending child support payments to an entity or individual other than the parent, as long as the parent gives written consent. The department further indicated that it is up to state law to determine what qualifies as written consent. Moreover, the parent at any point is free to change his or her mind about where to send a payment.

**OPPONENTS  
SAY:**

Child support payments should be required to be sent directly to the parent or caretaker with responsibility over the child. Because appointed guardians ad litem do not register with the state disbursement unit, many compliance and accountability problems have been reported about these agencies. Many obligor parents have not been credited properly for making payments, or custodial parents have not received the correct payment amount. Obligor parents face threats of contempt charges and possible jail time. While the OAG may take longer than a guardian ad litem to collect a payment, the OAG's collection process is effective and trustworthy.

This bill could jeopardize federal funding. Federal law requires state child support agencies to disburse payments directly to the custodial parent. As

written, the bill would require disbursement to an entity other than the parent, in direct conflict with federal law. As a result, the OAG could lose \$414 million in federal matching funds and performance incentives, and even TANF block grants could be put in jeopardy.

**NOTES:**

The substitute specified that a signature on a final order in a suit affecting the parent-child relationship also would serve as written consent to have child support payments sent to the entity designated to receive, disburse, and monitor child support payments.