

- SUBJECT:** Appointment of volunteer advocates as guardians ad litem
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 7 ayes — Rose, Darby, Elkins, Hernandez, Legler, Naishtat, Walle  
0 nays  
2 absent — Herrero, Hughes
- WITNESSES:** For — Joe Gagen, Texas CASA; Julie Johnson, Dallas CASA;  
(*Registered, but did not testify:* Constance Barker, DePelchin Children’s Center; Jane Burstain, Center for Public Policy Priorities; Randall Chapman, Texas Legal Services Center; Nicole LeBoeuf; Frank Simmons, CASA of the Coastal Bend)  
  
Against — Jean Boyd; Heidi Cox; Eric Freeby; Debra Lehrmann;  
(*Registered, but did not testify:* Johana Scot, Parent Guidance Center)  
  
On — Steve Bresnen, Texas Family Law Foundation; John J. Sampson
- BACKGROUND:** Family Code, sec. 107.002 sets out the powers and duties of court-appointed guardians ad litem for a child in suits affecting the parent-child relationship.
- A guardian ad litem for a child is not a party to the suit, but may:
- conduct an investigation to the extent that the guardian ad litem considers necessary to determine the best interests of the child; and
  - obtain and review copies of the child's relevant medical, psychological, and school records.
- The guardian ad litem also must:
- seek to elicit in a developmentally appropriate manner the child’s expressed objectives;
  - consider the child’s expressed objectives without being bound by those objectives;

- encourage settlement and the use of alternative forms of dispute resolution; and
- perform any specific task directed by the court.

Unless the guardian ad litem is an attorney appointed in the dual role, the court must ensure in a hearing or in a trial on the merits, that a guardian ad litem has an opportunity to testify regarding, and is permitted to submit a report regarding, the guardian ad litem's recommendations relating to the best interests of the child, and the bases for the guardian ad litem's recommendations.

Family Code, sec. 107.031, provides that in suits filed by a governmental entity, such as the Department of Family and Protective Services (DFPS), seeking to terminate parental rights or place a child in the foster care system, the court may appoint a non-profit organization, such as Court Appointed Special Advocates (CASA), as a guardian ad litem for the child or as a volunteer advocate for the child.

**DIGEST:**

CSHB 1943 would amend Family Code, sec. 107.031 to require that if a volunteer advocate was appointed in a suit filed by a governmental entity requesting termination of the parent-child relationship or appointing the entity as conservator of the child, the volunteer advocate would be appointed as a guardian ad litem.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 1943 would help to ensure the best possible advocacy for abused and neglected children in Texas. CASAs are volunteer service providers who advocate to courts on behalf of children within the foster care system. Because CASA volunteers usually work one case at a time, they are able to spend substantially more time with a child than an attorney or caseworker who may be working on dozens of cases. Thus, CASAs perform a vital and valuable service for children in need and for courts by providing important information and insight that can be critical to a judge's decision and a child's well being.

In suits affecting the parent-child relationship, the judge may appoint an attorney ad litem, a guardian ad litem, and a volunteer advocate as friend of the court to provide information regarding, or on behalf of the child. In some courts, an attorney may be allowed to serve in a dual role as both the attorney ad litem and the guardian ad litem for a child, in which case the

attorney is dually compensated. This arrangement can result in higher costs for the court and can sometimes result in conflicts among the child's wishes, the child's best interests, and the applicable law. When conflicts arise, a court may find it necessary to appoint a separate guardian ad litem to work on behalf of the child. CASA volunteers meet this need. Thus, CSHB 1943 would save the courts and the state time and expense by requiring that, when a CASA was available and appointed to a case, the CASA volunteer be appointed as a guardian ad litem.

Most judges in the state already appoint CASAs as guardians ad litem, but the appointment is left to the discretion of the judge. When CASAs are present but their services are not used, the result is inconsistent, fragmented, and expensive advocacy in which a valuable resource is wasted and more importantly a child's best interests may not be served. CSHB 1943 would ensure that this state-funded resource was utilized to its fullest by placing CASAs in the most beneficial position to advocate for abused and neglected children and provide needed information to courts.

The guardian ad litem status the bill would provide also would be important because without it a CASA, with only "friend of the court" status, is sometimes not heard. Judges are not required to consider information provided by volunteer advocates but they are required to hear and accept any information collected and provided by a guardian ad litem.

A judge's discretion still would be in place because the bill would not provide for a mandatory appointment. Judges would not be required to appoint a CASA in every case. If a judge believed another individual would be more qualified to serve as the guardian ad litem, the judge would have the discretion to appoint that individual. Likewise, if a judge had concerns regarding the restriction of an attorney ad litem's role if a CASA were used as a guardian ad litem, the judge would have the discretion to not appoint a CASA.

The vast majority of Texas courts that have CASAs—189 of 203—routinely appoint CASAs as guardians ad litem. These judges have found that a CASA as a guardian ad litem contributes to a court's ability to protect children. A recent judicial survey indicated that 94 percent of judges reported that when CASA was involved, the likelihood of a positive outcome for children increased. In addition, 97 percent of judges surveyed reported that the information and personal knowledge a CASA

provides is helpful to the judge's decision making. Therefore, CSHB 1943 would only place in statute what the majority of judges are practicing in their courtrooms and would thereby give more Texas children the benefit of this valuable state resource.

OPPONENTS  
SAY:

By requiring a court to appoint a CASA as a guardian ad litem, CSHB 1943 would limit the use of an attorney by a court to that of an attorney ad litem for the child, meaning the attorney would have to advocate for what the child wants, rather than what the child needs. CASA volunteers are wonderful advocates and are greatly beneficial to the courts and to the children, but they are not lawyers. CASAs cannot make arguments or call witnesses. A child involved in this type of suit needs a lawyer to represent him who will be acting in the best interest of the child, not according to the wishes of the child.

Many abused children, if given the choice, would choose to go back to their abuser because that is their home. If a lawyer was restricted to the attorney ad litem status, then the lawyer would be ethically bound to advocate for the wishes of the client. Therefore, the bill would create a situation in which a court had to choose between either appointing a CASA volunteer with an attorney ad litem advocating for what the child wanted, or to not use a CASA at all and appoint a lawyer in the dual role of guardian ad litem and attorney ad litem, thus creating an unacceptable situation for the courts.

NOTES:

The committee substitute differs from the bill as filed omitting provisions that would have:

- required a judge to appoint a volunteer advocate as a guardian ad litem if a volunteer advocate was available, rather than authorizing the appointment;
- required that a mandatorily appointed guardian ad litem be a charitable organization composed of volunteer advocates or an individual volunteer advocate if such an organization was available in the county; and
- if a court was unable to appoint such an organization or individual, then the court would have appointed an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child as a guardian ad litem.

The companion bill, SB 2434 by Davis, was heard in Senate Jurisprudence on May 6 and left pending.