

## **BILL ANALYSIS**

Senate Research Center  
84R19168 KSD-F

C.S.S.B. 1931  
By: Garcia  
State Affairs  
4/20/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Unlike a traditional adversarial proceeding, Child Protective Services cases typically evolve through a series of statutorily required hearings and often require a concerted, collaborative effort between parties and other professionals. Both children and parents rely on their attorneys to guide them through this complex system and advocate for their interests.

While many courts appoint attorneys to represent the legal rights of parents at the beginning of the case, many others make the appointment after the critical fourteen day removal hearing, otherwise known as the adversary hearing. This hearing is the first opportunity for the judge to make a determination of indigence. Unfortunately, by the time the adversary hearing is held, it is too late for an unrepresented parent to meaningfully challenge removal of their child.

C.S.S.B. 1931 allows a court to appoint an attorney to represent a parent for a limited duration starting from the date the court issues the temporary restraining order or order of attachment of a child (when the state files the petition for removal) until the court makes the determination of indigence or commences the full adversary hearing under Section 262.201 (Full Adversary Hearing; Findings of the Court), whichever occurs first.

C.S.S.B. 1931 amends current law relating to the appointment of an attorney ad litem for a parent 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 Section 107.013, Family Code, by adding Subsection (a-1) and amending Subsections (b) and (d), as follows:

(a-1) Requires the court to, in a suit described by Subsection (a) (relating to a suit filed by a government entity under which termination of the parent-child relationship is requested), if a parent is not represented by an attorney at the parent's first appearance in court, inform the parent of the right to be represented by an attorney and, if the parent is indigent and appears in opposition to the suit, the right to an attorney ad litem appointed by the court.

(b) Authorizes the court, if both parents of the child are entitled to the appointment of an attorney ad litem under this section and the court finds that the interests of the parents are not in conflict and that there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties, to appoint an attorney ad litem to represent the interests of both parents.

(d) Requires the court to require a parent who claims indigence under Subsection (a) to file an affidavit of indigence in accordance with Rule 145(b) of the Texas Rules of Civil Procedure before the court may conduct a hearing to determine the parent's indigence under this section, rather than requires a parent who claims indigence under Subsection

(a) to file an affidavit of indigence in accordance with Rule 145(b) of the Texas Rules of Civil Procedure before the court can conduct a hearing to determine the parent's indigence under this section. Authorizes the court to consider additional evidence at that hearing, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. Requires the court to appoint an attorney ad litem to represent the parent if the court determines the parent is indigent.

SECTION 2. Amends Part 1, Subchapter B, Chapter 107, Family Code, by adding Section 107.0141, as follows:

Sec. 107.0141. TEMPORARY APPOINTMENT OF ATTORNEY AD LITEM FOR CERTAIN PARENTS. (a) Authorizes the court to appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at the time the court issues a temporary restraining order or attachment of the parent's child under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) and ending on the court's determination of whether the parent is indigent before commencement of the full adversary hearing.

(b) Provides that an attorney ad litem appointed for a parent under this section:

(1) has the powers and duties of an attorney ad litem appointed under Section 107.0131 (Powers and Duties of Attorney Ad Litem for Parent); and

(2) if applicable, shall conduct an investigation regarding the petitioner's due diligence in locating and serving citation on the parent and interview any party or other person who may have information relating to the identity or location of the parent.

(c) Requires the attorney ad litem to, if the attorney ad litem identifies and locates the parent:

(1) inform the parent of the parent's right to be represented by an attorney and of the parent's right to an attorney ad litem appointed by the court, if the parent is indigent and appears in opposition to the suit;

(2) if the parent claims indigence and requests an attorney ad litem beyond the period of the temporary appointment under this section, assist the parent in making a claim of indigence for the appointment of an attorney ad litem; and

(3) assist the parent in preparing for the full adversary hearing under Subchapter C (Adversary Hearing), Chapter 262.

(d) Authorizes the court to appoint the attorney ad litem to continue to represent the parent under Section 107.013(a)(1) (relating to an indigent parent of a child who responds in opposition to a request for termination of the parent-child relationship) if the court determines the parent is indigent.

(e) Requires the attorney ad litem to submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent if the attorney ad litem is unable to identify or locate the parent. Requires the court to discharge the attorney ad litem from the appointment on receipt of the summary required by this subsection.

(f) Requires the court to discharge the attorney ad litem from the appointment if the attorney ad litem identifies or locates the parent and the court determines that the parent is not indigent.

SECTION 3. Amends Section 262.201(a-2), Family Code, as follows:

(a-2) Requires the court to require the parent to complete and file with the court an affidavit of indigence if a parent claims indigence and requests the appointment of an attorney before the full adversary hearing. Authorizes the court to consider additional evidence, rather than to hear evidence, to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. Requires the court to make a determination of indigence before commencement of the full adversary hearing if the appointment of an attorney for the parent is requested.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2015.