SUBJECT: Alternate ways for attorneys ad litem to meet with children and caretakers

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Rose, S. King, J. Davis, Eissler, Herrero, Naishtat, Parker, Pierson

0 nays

1 absent — Hughes

WITNESSES: For — Steve Bresnen, Texas Family Law Foundation; Richard Cortese, Bell County, Commissioner Court; Scott McCown, Center for Public Policy Priorities

Against — None

On — (*Registered, but did not testify:* Liz Kromrei, Child Protective Services, Department of Family and Protective Services)

BACKGROUND: During the 2005 regular session, the 79th Legislature enacted SB 6 by Nelson to revise the Child Protective Services (CPS) program in Texas. Among the changes is a requirement that a child's attorney ad litem in a CPS case meet with the child before each court hearing or, if the child is under four years of age, with the child's caretaker. Texas Attorney General Opinion No. GA-0406, issued February 27, 2006, determined that an attorney ad litem's statutory duty to meet with a child prior to court hearings may not be satisfied by conducting a telephone interview, unless a court determined that the attorney ad litem established good cause for noncompliance in that it was impracticable, not capable of being done, or was not in the child's best interest.

DIGEST: HB 1972 would allow a court, on a showing of good cause, to authorize an attorney ad litem to use a telephone or video conference to satisfy the requirement to meet with children or caretakers prior to hearings.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS SAY:

HB 1972 would bolster protections set in place by SB 6 for attorneys ad litem to operate in the best interest of children. Particularly in smaller counties, not enough foster homes are available to place children within their counties of residence. Bell County alone has more than 50 children placed out of state and 180 children outside the county. It would not be unusual in CPS cases to have six hearings in six to 12 months. Counties pay lawyers appointed to represent children from their general funds, and if a lawyer has to travel outside the county for multiple face-to-face visits, it increases a county's costs and diverts the lawyer's time from focusing on the case.

Attorneys could continue traveling to meet with children when it was in the child's best interest. However, if it would not enhance the child's well-being to communicate in person, it would be better for a county to use funds on other critical, basic needs and contact children or caretakers by phone. In addition, children need competent attorneys to represent their interests, and the need for extensive travel may discourage lawyers from agreeing to represent children.

Attorneys usually would meet with children in person before first hearings, but in subsequent hearings, it might be acceptable to contact children by phone or video conference for routine issues. The American Bar Association's *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) says that a child's attorney should conduct thorough and continuing investigations and discovery that may include reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other relevant records. Such an investigation requires a great deal of time – time that could be diminished if an attorney spent productive hours driving when a phone conversation would be sufficient.

In keeping with the intent of SB 6, HB 1972 would improve child advocacy by increasing interactions between attorney and child. Texas Attorney General Opinion No. GA-0406 (2006) could have a chilling effect on the amount of interaction. While the opinion applies only to the required meeting before each hearing, some attorneys could construe it as applying to all contact with clients. HB 1972 would clarify that phone conversations were acceptable and would make attorneys more comfortable communicating that way if they needed to interact with children more often than the required meetings.

An attorney still would be required to conduct a thorough investigation, and it would be a lawyer's ethical duty to determine whether it was acceptable to communicate with a child by phone or video conference. Even if the attorney did not make the most prudent choice for a child, the bill would require the judge to decide if an attorney had "good cause" to meet with the child by phone or video conference. HB 1972 would strike a balance between meeting the best interests of a child in protective custody and saving money and time that could be used for other critical purposes.

OPPONENTS SAY:

HB 1972 would diminish one of the protective measures set in place through SB 6 in 2005 to ensure that lawyers act in the best interest of children. The American Bar Association's *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) says that an attorney should meet in person with a child to facilitate communication and assess the child's circumstances.

Sometimes the most telling information regarding a child's needs and circumstances is non-verbal. Phone conversations and video conferences do not capture fully a child's environment, and phone conversations in particular would give caretakers the opportunity to influence what a child communicates. Recent sad events in which children have died in foster care make it clear that not all children are safe in their foster placements, and in-person meetings are one means of ensuring a child's well-being.

Attorneys could begin to rely on the option to use phones or video conferences when they were burdened by multiple cases. While the bill would give judges the option of granting or denying to an attorney the permission to use these options, over time it could become a more acceptable practice.