

BILL ANALYSIS

Senate Research Center
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S.B. 1767
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Section 263.401, Family Code, requires that a suit be dismissed if the court has not commenced a "trial on the merits" within one year of the date that a court appointed the Department of Family and Protective Services (DFSP) as temporary managing conservator.

This bill is intended to improve judicial practice and attorney representation in child abuse and neglect cases. It does so by ordering that the court in such cases consider certain attorney qualifications. It also orders that a study be conducted by the Permanent Judicial Commission for Children Youth and Families to examine the best practices for representation of children and parents in these cases. This bill further requires that in the construction or restoration of courthouses, consideration be made for making the courtroom welcoming for children who are required to testify. Finally, this bill is intended to fix a problem in the Family Code that would require certain suits affecting the termination of the parent-child relationship to be dismissed improperly.

As proposed, S.B. 1767 amends current law relating to practices and procedures in child abuse and neglect cases.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 1 (Section 104.0015, Family Code) of this bill.

Rulemaking authority is expressly granted to the Texas Court of Criminal Appeals in SECTION 5 (Section 22.110, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 104, Family Code, by adding Section 104.0015, as follows:

Section 104.0015. PROCEDURES FOR TESTIMONY OF CHILDREN. Requires the Texas Supreme Court (supreme court), by rule, to establish procedures to make the courtroom environment more accommodating to children who must testify in court.

SECTION 2. Amends Section 107.004(b), Family Code, to require an attorney ad litem appointed for a child in a proceeding under Chapter 262 (Procedures In Suit By Governmental Entity To Protect Health and Safety of Child) or 263 (Review of Placement of Children Under Care of Department of Protective and Regulatory Services) to complete at least four, rather than three, hours of continuing legal education relating to child advocacy as described by Subsection (c) (relating to certain requirements for continuing legal education under the section) as soon as practicable after the attorney ad litem's appointment. Requires at least one hour of the training to relate to substance abuse and its impact on child abuse and neglect cases.

SECTION 3. Amends Subchapter A, Chapter 107, Family Code, by adding Sections 107.0041 and 107.0042, as follows:

Sec. 107.0041. ATTORNEY AD LITEM REGISTRY. (a) Defines "commission."

(b) Requires the Permanent Judicial Commission for Children, Youth and Families (commission), in conjunction with the State Bar of Texas, to compile an

attorney ad litem registry that includes the name of each attorney eligible for appointment as an attorney ad litem for a child, and a brief description of the attorney's qualifications, and the ad litem training the attorney has completed.

(c) Requires the commission to make the registry available on the supreme court's Internet website, and at each courthouse in the state containing a court that has jurisdiction in family law cases.

Sec. 107.0042. PROCEDURES FOR APPOINTING ATTORNEY AD LITEM. Requires the court, before appoint an attorney to serve as an attorney ad litem, to consider the ability of the attorney to handle the ad litem duties in addition to the attorney's other work, including the number of cases for which the attorney is already serving as an ad litem, and the complexity of the case and the time required to adequately represent the child's interests.

SECTION 4. Amends Subchapter A, Chapter 107, Family Code, by adding Section 107.0046, as follows:

Sec. 107.0046. PROHIBITED APPOINTMENT. Prohibits a court from appointing an attorney to serve as an attorney ad litem for a child if the attorney, during a previous attorney ad litem appointment, failed to perform the duties required by Sections 107.003 (Powers and Duties of Attorney Ad Litem For Child and Amicus Attorney) and 107.004 (Additional Duties of Attorney Ad Litem For Child).

SECTION 5. Amends Section 22.110(b), Government Code, to require that the rules adopted by the court of criminal appeals require each district judge, judge of a statutory county court, associate judge appointed under Chapter 54 (Masters; Magistrates; Referees; Associate Judges) of this code and Chapter 201 (Associate Judge), Family Code, master, referee, and magistrate to complete at least 13, rather than 12, hours of the training within the judge's first term of office or the judicial officer's first four years of service and provide a method for certification of completion of that training. Requires that at least one hour of the training cover the topic described by Subsection (d)(9) (relating to the impact of substance abuse on an unborn child and on a person's ability to care for a child). Requires that at least four hours of the training be dedicated to issues related to child abuse and neglect and must cover at least two of the topics described in Subsections (d)(8) (relating to the dynamics of sexual abuse of children, including child abuse accommodation syndrome and grooming), (10) (relating to issues of attachment and bonding between children and caregivers), (11) (relating to issues of child development that pertain to child abuse and neglect), and (12) (relating to medical findings regarding physical abuse, sexual abuse, and child abuse and neglect), rather than (d)(8) - (12).

SECTION 6. Requires the commission established by the supreme court to study the best practices for representation of children in child abuse and neglect cases, appropriate training and education requirements for judges and attorneys involved in child protective services cases, and the potential need for more oversight and enforcement. Requires the commission, not later than October 1, 2010, to submit a report containing suggested statutory or rule changes to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with the primary jurisdiction over child abuse and neglect issues.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2009.