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H.B. No. 3041

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the provision of certain services by the Department of
3 Family and Protective Services as an alternative to removing a
4 child and certain procedures with respect to children in the
5 managing conservatorship of the department.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 262.1095, Family Code, is amended by
8 amending Subsections (a) and (b) and adding Subsection (d-1) to
9 read as follows:

10 (a) When the Department of Family and Protective Services or
11 another agency takes possession of a child under this chapter, the
12 department:

13 (1) shall provide information as prescribed by this
14 section in writing to each adult the department is able to identify
15 and locate who is:

16 (A) related to the child within the third degree
17 by consanguinity as determined under Chapter 573, Government Code;

18 (B) an adult relative of the alleged father of
19 the child if the department has a reasonable basis to believe the
20 alleged father is the child's biological father; or

21 (C) identified as a potential relative or
22 designated caregiver, as defined by Section 264.751, on the
23 proposed child placement resources form provided under Section
24 261.307; and

1 (2) may provide information as prescribed by this
2 section to each adult the department is able to identify and locate
3 who has a long-standing and significant relationship with the
4 child.

5 (b) The information provided under Subsection (a) must:

6 (1) state that the child has been removed from the
7 child's home and is in the temporary managing conservatorship of
8 the department;

9 (2) explain the options available to the individual to
10 participate in the care and placement of the child and the support
11 of the child's family, the methods by which the individual may
12 exercise those options, and any requirements the individual must
13 satisfy to exercise those options, including:

14 (A) the requirement that the individual be
15 evaluated by the Department of Family and Protective Services under
16 Section 262.114 before the individual may serve as a substitute
17 caregiver; and

18 (B) the deadlines before which the individual
19 must respond to exercise those options;

20 (3) identify the [~~state that some~~] options available
21 to the individual that may be lost if the individual fails to
22 respond in a timely manner; [~~and~~]

23 (4) include, if applicable, the date, time, and
24 location of the hearing under Subchapter C, Chapter 263; and

25 (5) include information regarding the procedures and
26 timeline for a suit affecting the parent-child relationship under
27 this chapter.

1 (d-1) Immediately after the Department of Family and
2 Protective Services identifies and locates an individual described
3 by Subsection (a)(1), the department shall provide the information
4 required by this section.

5 SECTION 2. Chapter 262, Family Code, is amended by adding
6 Subchapter F to read as follows:

7 SUBCHAPTER F. FAMILY PRESERVATION SERVICES PILOT PROGRAM

8 Sec. 262.401. DEFINITIONS. In this subchapter:

9 (1) "Child who is a candidate for foster care" means a
10 child who is at imminent risk of being removed from the child's home
11 and placed into the conservatorship of the department because of a
12 continuing danger to the child's physical health or safety caused
13 by an act or failure to act of a person entitled to possession of the
14 child but for whom a court of competent jurisdiction has issued an
15 order allowing the child to remain safely in the child's home or in
16 a kinship placement with the provision of family preservation
17 services.

18 (2) "Department" means the Department of Family and
19 Protective Services.

20 (3) "Family preservation service" means a
21 time-limited, family-focused service, including a service subject
22 to the Family First Prevention Services Act (Title VII, Div. E, Pub.
23 L. No. 115-123), provided to the family of a child who is:

24 (A) a candidate for foster care to prevent or
25 eliminate the need to remove the child and to allow the child to
26 remain safely with the child's family; or

27 (B) a pregnant or parenting foster youth.

1 (4) "Family preservation services plan" means a
2 written plan, based on a professional assessment, listing the
3 family preservation services, including services subject to the
4 Family First Prevention Services Act (Title VII, Div. E, Pub. L.
5 No. 115-123), to be provided to the family of a child who is:

6 (A) a candidate for foster care; or

7 (B) a pregnant or parenting foster youth.

8 (5) "Foster care" means substitute care as defined by
9 Section 263.001.

10 Sec. 262.402. PILOT PROGRAM FOR FAMILY PRESERVATION
11 SERVICES. (a) The department shall establish a pilot program that
12 allows the department to dispose of an investigation by referring
13 the family of a child who is a candidate for foster care for family
14 preservation services and allowing the child to return home instead
15 of entering foster care or by providing services to a pregnant or
16 parenting foster youth. The department shall implement the pilot
17 program in two child protective services regions in this state, one
18 urban and one rural.

19 (b) The pilot program must be implemented in at least one
20 child protective services region in this state in which
21 community-based care has been implemented under Subchapter B-1,
22 Chapter 264.

23 (c) In authorizing family preservation services for a child
24 who is a candidate for foster care, the child's safety is the
25 primary concern. The services may be modified as necessary to
26 accommodate the child's circumstances.

27 (d) In implementing the pilot program, the department shall

1 use:

2 (1) Title IV-E funds to:

3 (A) pay for legal representation for parents in
4 the manner provided by Section 107.015; or

5 (B) provide to counties a matching reimbursement
6 for the cost of the legal representation; and

7 (2) funds received under the Temporary Assistance for
8 Needy Families (TANF) program or other department funds to provide
9 enhanced in-home support services to families qualifying for
10 prevention services under this subchapter to achieve the objectives
11 in the family preservation services plan.

12 Sec. 262.403. COURT ORDER REQUIRED. (a) Subject to
13 Subsection (b), the department must obtain a court order from a
14 court of competent jurisdiction to compel the family of a child who
15 is a candidate for foster care to obtain family preservation
16 services and complete the family preservation services plan.

17 (b) The department is not required to obtain a court order
18 to provide family preservation services to a pregnant or parenting
19 foster youth.

20 Sec. 262.404. FILING SUIT; PETITION REQUIREMENTS. (a) The
21 department may file a suit requesting the court to render an order
22 requiring the parent, managing conservator, guardian, or other
23 member of the child's household to:

24 (1) participate in the family preservation services
25 for which the department makes a referral or services the
26 department provides or purchases to:

27 (A) alleviate the effects of the abuse or neglect

1 that has occurred;

2 (B) reduce a continuing danger to the physical
3 health or safety of the child caused by an act or failure to act of
4 the parent, managing conservator, guardian, or other member of the
5 child's household; or

6 (C) reduce a substantial risk of abuse or neglect
7 caused by an act or failure to act of the parent, managing
8 conservator, guardian, or other member of the child's household;

9 (2) permit the child and any siblings of the child to
10 receive the services; and

11 (3) complete all actions and services required under
12 the family preservation services plan.

13 (b) A suit requesting an order under this section may be
14 filed in a court with jurisdiction to hear the suit in the county in
15 which the child is located.

16 (c) Except as otherwise provided by this subchapter, the
17 suit is governed by the Texas Rules of Civil Procedure applicable to
18 the filing of an original lawsuit.

19 (d) The petition for suit must be supported by:

20 (1) a sworn affidavit based on personal knowledge and
21 stating facts sufficient to support a finding that:

22 (A) the child has been a victim of abuse or
23 neglect or is at substantial risk of abuse or neglect; and

24 (B) there is a continuing danger to the child's
25 physical health or safety caused by an act or failure to act of the
26 parent, managing conservator, guardian, or other member of the
27 child's household unless that person participates in family

1 preservation services requested by the department; and

2 (2) a safety risk assessment for the child that
3 documents:

4 (A) the process for the child to remain at home
5 with appropriate family preservation services instead of foster
6 care;

7 (B) the specific reasons the department should
8 provide family preservation services to the family; and

9 (C) the manner in which family preservation
10 services will mitigate the risk of the child entering foster care.

11 (e) In a suit filed under this section, the court may render
12 a temporary restraining order as provided by Section [105.001](#).

13 (f) The court shall hold a hearing on the petition not later
14 than the 14th day after the date the petition is filed unless the
15 court finds good cause for extending that date for not more than 14
16 days.

17 Sec. 262.405. AD LITEM APPOINTMENTS. (a) The court shall
18 appoint an attorney ad litem to represent the interests of the child
19 immediately after a suit is filed under Section 262.404 but before
20 the hearing to ensure adequate representation of the child. The
21 attorney ad litem for the child has the powers and duties of an
22 attorney ad litem for a child under Chapter [107](#).

23 (b) The court shall appoint an attorney ad litem to
24 represent the interests of a parent for whom participation in
25 family preservation services is being requested immediately after
26 the suit is filed but before the hearing to ensure adequate
27 representation of the parent. The attorney ad litem for the parent

1 has the powers and duties of an attorney ad litem for a parent under
2 Section 107.0131.

3 (c) Before the hearing commences, the court shall inform
4 each parent of:

5 (1) the parent's right to be represented by an
6 attorney; and

7 (2) for a parent who is indigent and appears in
8 opposition to the motion, the parent's right to a court-appointed
9 attorney.

10 (d) If a parent claims indigence, the court shall require
11 the parent to complete and file with the court an affidavit of
12 indigence. The court may consider additional evidence to determine
13 whether the parent is indigent, including evidence relating to the
14 parent's income, source of income, assets, property ownership,
15 benefits paid in accordance with a federal, state, or local public
16 assistance program, outstanding obligations, and necessary
17 expenses and the number and ages of the parent's dependents. If the
18 court finds the parent is indigent, the attorney ad litem appointed
19 to represent the interests of the parent may continue the
20 representation. If the court finds the parent is not indigent, the
21 court shall discharge the attorney ad litem from the appointment
22 after the hearing and order the parent to pay the cost of the
23 attorney ad litem's representation.

24 (e) The court may, for good cause shown, postpone any
25 subsequent proceedings for not more than seven days after the date
26 of the attorney ad litem's discharge to allow the parent to hire an
27 attorney or to provide the parent's attorney time to prepare for the

1 subsequent proceeding.

2 Sec. 262.406. COURT ORDER. (a) Except as provided by
3 Subsection (d), at the conclusion of the hearing in a suit filed
4 under Section 262.404, the court shall order the department to
5 provide family preservation services and to execute a family
6 preservation services plan developed in collaboration with the
7 family of the child who is a candidate for foster care if the court
8 finds sufficient evidence to satisfy a person of ordinary prudence
9 and caution that:

10 (1) abuse or neglect occurred or there is a
11 substantial risk of abuse or neglect or continuing danger to the
12 child's physical health or safety caused by an act or failure to act
13 of the parent, managing conservator, guardian, or other member of
14 the child's household;

15 (2) family preservation services are necessary to
16 ensure the child's physical health or safety; and

17 (3) family preservation services are appropriate
18 based on the child's safety risk assessment and the child's family
19 assessment.

20 (b) The court's order for family preservation services
21 must:

22 (1) identify and require specific services narrowly
23 tailored to address the factors that make the child a candidate for
24 foster care; and

25 (2) include a statement on whether the services to be
26 provided to the family are appropriate to address the factors that
27 place the child at risk of removal.

1 (c) The court may, in its discretion, order family
2 preservation services for a parent whose parental rights to another
3 child were previously terminated.

4 (d) If the court finds, by clear and convincing evidence,
5 that the parent has subjected the child to aggravated circumstances
6 described by Section 262.2015, the court may order that family
7 preservation services not be provided.

8 Sec. 262.407. FAMILY PRESERVATION SERVICES PLAN; CONTENTS.

9 (a) On order of the court under Section 262.406, the department in
10 consultation with the child's family shall develop a family
11 preservation services plan. The department and the family shall
12 discuss each term and condition of the plan.

13 (b) The family preservation services plan must be written in
14 a manner that is clear and understandable to the parent, managing
15 conservator, guardian, or other member of the child's household and
16 in a language the person understands.

17 (c) The family preservation services plan must:

18 (1) include a safety risk assessment of the child who
19 is the subject of the investigation and an assessment of the child's
20 family;

21 (2) state the reasons the department is involved with
22 the family;

23 (3) be narrowly tailored to address the specific
24 reasons the department is involved with the family and the factors
25 that make the child a candidate for foster care;

26 (4) list the specific family preservation services the
27 family will receive under the plan and identify the manner in which

1 those services will mitigate the child's specific risk factors and
2 allow the child to remain safely at home;

3 (5) specify the tasks the family must complete during
4 the effective period of the plan and include a schedule with
5 appropriate completion dates for those tasks; and

6 (6) include the name of the department or single
7 source continuum contractor representative who will serve as a
8 contact for the family in obtaining information related to the
9 plan.

10 (d) The family preservation services plan must include the
11 following statement:

12 "TO THE PARENT OF THE CHILD SERVED BY THIS PLAN: THIS
13 DOCUMENT IS VERY IMPORTANT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR
14 CHILD WITH A SAFE ENVIRONMENT WITHIN THE REASONABLE PERIOD
15 SPECIFIED IN THIS PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE
16 YOUR CHILD WITH A SAFE ENVIRONMENT, YOUR CHILD MAY BE REMOVED FROM
17 YOU, AND YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS MAY BE
18 RESTRICTED OR TERMINATED. A COURT HEARING WILL BE HELD AT WHICH A
19 JUDGE WILL REVIEW THIS FAMILY PRESERVATION SERVICES PLAN."

20 Sec. 262.408. FAMILY PRESERVATION SERVICES PLAN: SIGNING
21 AND EFFECT. (a) The family of a child who is a candidate for foster
22 care and the department shall sign the family preservation services
23 plan, and the department shall submit a copy of the signed plan to
24 the court for review.

25 (b) If the family is unwilling to participate in the
26 development of the family preservation services plan, the
27 department may submit the plan to the court without the parents'

1 signatures.

2 (c) The family preservation services plan takes effect on
3 the date the court certifies that the plan complies with the court's
4 order for family preservation services and is narrowly tailored to
5 address the factors that make the child a candidate for foster care.
6 The court may hold a hearing to review the plan for compliance.

7 (d) The family preservation services plan remains in effect
8 until:

9 (1) the 180th day after the date the court's order for
10 family preservation services is signed, unless renewed by an order
11 of the court; or

12 (2) the date the plan is amended or revoked by the
13 court.

14 (e) A person subject to the family preservation services
15 plan may file a motion with the court at any time to request a
16 modification or revocation of the original or any amended plan.

17 Sec. 262.409. AMENDED FAMILY PRESERVATION SERVICES PLAN.

18 (a) A family preservation services plan may be amended at any time.
19 The department or single source continuum contractor and the
20 parents of a child who is a candidate for foster care shall jointly
21 develop any amendment to the plan. The department or contractor
22 must inform the parents of their rights related to the amended
23 family preservation services plan process.

24 (b) The parents and the person preparing the amended family
25 preservation services plan shall sign the amended plan, and the
26 department or single source continuum contractor shall submit the
27 amended plan to the court for review.

1 (c) If the parents are unwilling to participate in the
2 development of the amended family preservation services plan, the
3 department or single source continuum contractor may submit the
4 amended plan to the court without the parents' signatures.

5 (d) The amended family preservation services plan takes
6 effect on the date the court certifies that the amended plan
7 complies with the court's order for family preservation services
8 and is narrowly tailored to address the factors that make the child
9 a candidate for foster care. The court may hold a hearing to review
10 the amended plan for compliance.

11 (e) The amended family preservation services plan is in
12 effect until:

13 (1) the 180th day after the date the court's order for
14 family preservation services is signed, unless renewed by an order
15 of the court; or

16 (2) the date the amended plan is modified or revoked by
17 the court.

18 Sec. 262.410. COURT IMPLEMENTATION OF FAMILY PRESERVATION
19 SERVICES PLAN. (a) After reviewing and certifying an original or
20 any amended family preservation services plan, the court shall
21 incorporate the original and any amended plan into the court's
22 order and may render additional appropriate orders to implement or
23 require compliance with an original or amended plan.

24 (b) In rendering an order, a court may omit any service
25 prescribed under the family preservation services plan that the
26 court finds is not appropriate or is not narrowly tailored to
27 address the factors that make the child a candidate for foster care

1 and place the child at risk of removal.

2 Sec. 262.411. SELECTION OF SERVICE PROVIDER. (a) A parent,
3 managing conservator, guardian, or other member of a household
4 ordered to participate in family preservation services under this
5 subchapter may obtain those services from a qualified or licensed
6 provider selected by the person.

7 (b) Services provided by a provider selected under
8 Subsection (a) must be similar in scope and duration to services
9 described by the family preservation services plan adopted under
10 Section 262.407 and achieve the stated goals of the service plan.
11 The service provider must certify in writing that the parent,
12 managing conservator, guardian, or other member of a household
13 completed the services.

14 (c) A parent, managing conservator, guardian, or other
15 member of a household who obtains family preservation services from
16 a provider selected by the person is responsible for the cost of
17 those services.

18 (d) A parent, managing conservator, guardian, or other
19 member of a household who successfully completes the required
20 family preservation services must obtain verification from the
21 service provider of that completion. The department shall accept
22 the service provider's verification provided under this subsection
23 as proof that the person successfully completed the court-ordered
24 family preservation services.

25 Sec. 262.412. STATUS HEARING. Not later than the 90th day
26 after the date the court renders an order for family preservation
27 services under this subchapter, the court shall hold a hearing to

1 review the status of each person required to participate in the
2 services and of the child and to review the services provided,
3 purchased, or referred. The court shall set subsequent review
4 hearings every 90 days to review the continued need for the order.

5 Sec. 262.413. EXTENSION OF ORDER. (a) The court may extend
6 an order for family preservation services rendered under this
7 subchapter on a showing by the department of a continuing need for
8 the order, after notice and hearing. Except as provided by
9 Subsection (b), the court may extend the order only one time for not
10 more than 180 days.

11 (b) The court may extend an order rendered under this
12 subchapter for not more than an additional 180 days only if:

13 (1) the court finds that:

14 (A) the extension is necessary to allow the
15 person required to participate in family preservation services
16 under the family preservation services plan time to complete those
17 services;

18 (B) the department made a good faith effort to
19 timely provide the services to the person;

20 (C) the person made a good faith effort to
21 complete the services; and

22 (D) the completion of the services is necessary
23 to ensure the physical health and safety of the child; and

24 (2) the extension is requested by the person required
25 to participate in family preservation services under the family
26 preservation services plan or the person's attorney.

27 Sec. 262.414. EXPIRATION OF ORDER. On expiration of a court

1 order for family preservation services under this subchapter, the
2 court shall dismiss the case.

3 Sec. 262.415. CONTRACT FOR SERVICES. (a) The department
4 may contract with one or more persons to provide family
5 preservation services under the pilot program. In a child
6 protective services region in this state in which community-based
7 care under Subchapter B-1, Chapter 264, has been implemented and in
8 which the pilot program is implemented, the department may contract
9 with the single source continuum contractor to provide family
10 preservation services under the pilot program.

11 (b) The contract with the person selected to provide family
12 preservation services must include performance-based measures that
13 require the person to show that as a result of the services:

14 (1) fewer children enter foster care in the pilot
15 program region in comparison to other regions of this state;

16 (2) fewer children are removed from their families
17 after receiving the services in the pilot program region in
18 comparison to other regions of this state; and

19 (3) fewer children enter foster care in the five years
20 following completion of the services in the pilot program region in
21 comparison to other regions of this state.

22 (c) The department shall collaborate with a person selected
23 to provide family preservation services to identify children who
24 are candidates for foster care or who are pregnant or parenting
25 foster youth and to ensure that the services are appropriate for
26 children referred by the department.

27 Sec. 262.416. LIMIT ON FINANCE OF SERVICES. If a court

1 order for services under this subchapter includes services that are
2 not subject to the Family First Prevention Services Act (Title VII,
3 Div. E., Pub. L. No. 115-123), the order must identify a method of
4 financing for the services and the local jurisdiction that will pay
5 for the services.

6 Sec. 262.417. REPORT TO LEGISLATURE. (a) Not later than the
7 first anniversary of the date the department commences a pilot
8 program under this subchapter and every two years after that date,
9 the department shall contract with an entity based in this state
10 that is independent of the department and has demonstrated
11 expertise in statistical, financial, logistical, and operational
12 analysis to evaluate the implementation of the pilot program under
13 this subchapter, assess its progress, and report its findings to
14 the appropriate standing committees of the legislature having
15 jurisdiction over child protective services and foster care
16 matters. The report must include:

17 (1) a detailed description of the actions taken by the
18 department to ensure the successful implementation of the pilot
19 program;

20 (2) a detailed analysis of the role each of the
21 following entities has in the pilot program:

22 (A) the courts;

23 (B) legal representatives;

24 (C) the investigations division of the
25 department; and

26 (D) the department or other entity implementing
27 the pilot program;

1 (3) an analysis of any barrier to the successful
2 implementation of the pilot program and recommendations for
3 overcoming those barriers;

4 (4) data on the performance-based outcomes described
5 by Subsection (b) and achieved in the child protective services
6 region in which the pilot program is implemented;

7 (5) a detailed comparison of outcomes achieved in the
8 child protective services region in which the pilot program is
9 implemented with outcomes achieved in other child protective
10 services regions;

11 (6) a detailed description of the costs of the pilot
12 program and services provided; and

13 (7) recommendations on whether to expand services
14 described in this subchapter to other child protective services
15 regions in this state based on the outcomes and performance of the
16 pilot program.

17 (b) Performance-based outcomes for evaluating the pilot
18 program must include:

19 (1) the number of children served;

20 (2) the number of families served;

21 (3) the percentage of children who do not have a
22 reported finding of abuse, neglect, or exploitation;

23 (4) the percentage of children served who did not
24 enter foster care at case closure;

25 (5) the percentage of children served who did not
26 enter foster care within six months and one year of the date the
27 case was closed;

1 (6) the number of families who received family
2 preservation services under the pilot program for whom the
3 department opens an investigation of abuse or neglect involving the
4 family before the second anniversary of the date the case was
5 closed; and

6 (7) the average length of time services are provided
7 from the entry of an order for family preservation services to case
8 dismissal.

9 SECTION 3. Section 263.202(b), Family Code, is amended to
10 read as follows:

11 (b) Except as otherwise provided by this subchapter, a
12 status hearing shall be limited to matters related to the contents
13 and execution of the service plan filed with the court. The court
14 shall review the service plan that the department filed under this
15 chapter for reasonableness, accuracy, and compliance with
16 requirements of court orders and make findings as to whether:

17 (1) a plan that has the goal of returning the child to
18 the child's parents adequately ensures that reasonable efforts are
19 made to enable the child's parents to provide a safe environment for
20 the child;

21 (2) the child's parents have reviewed and understand
22 the plan and have been advised that unless the parents are willing
23 and able to provide the child with a safe environment, even with the
24 assistance of a service plan, within the reasonable period of time
25 specified in the plan, the parents' parental and custodial duties
26 and rights may be subject to restriction or to termination under
27 this code or the child may not be returned to the parents;

1 (3) the plan is narrowly [~~reasonably~~] tailored to
2 address any specific issues identified by the department; and

3 (4) the child's parents and the representative of the
4 department have signed the plan.

5 SECTION 4. Subchapter C, Chapter 264, Family Code, is
6 amended by adding Section 264.2031 to read as follows:

7 Sec. 264.2031. SELECTION OF SERVICE PROVIDER. (a) A
8 parent, managing conservator, guardian, or other member of a
9 household ordered to participate in services under Section
10 264.203(a) may obtain those services from a qualified provider
11 selected by the person.

12 (b) A parent, managing conservator, guardian, or other
13 member of a household who obtains services from a provider selected
14 by the person is responsible for the cost of those services.

15 (c) A parent, managing conservator, guardian, or other
16 member of a household who successfully completes the services
17 ordered under Section 264.203(a) must obtain verification from the
18 service provider of that completion. The department shall accept
19 the service provider's verification provided under this subsection
20 as proof that the person successfully completed the court-ordered
21 services.

22 SECTION 5. The changes in law made by this Act to Section
23 262.1095, Family Code, apply only to a suit affecting the
24 parent-child relationship filed on or after the effective date of
25 this Act. A suit affecting the parent-child relationship filed
26 before the effective date of this Act is governed by the law in
27 effect immediately before the effective date of this Act, and the

1 former law is continued in effect for that purpose.

2 SECTION 6. This Act takes effect September 1, 2021.