

By: Frank

H.B. No. 3041

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the procedures and grounds for taking possession of a
3 child and authorizing a family preservation services pilot program
4 as an alternative to removal in suits affecting the parent-child
5 relationship.

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

7 SECTION 1. Chapter 262, Family Code, is amended by adding
8 Subchapter F to read as follows:

9 SUBCHAPTER F. FAMILY PRESERVATION SERVICES PILOT PROGRAM

10 Sec. 262.401. DEFINITIONS. In this subchapter:

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

20 (2) "Department" means the Department of Family and
21 Protective Services.

22 (3) "Family preservation service" means a
23 time-limited service subject to the Family First Prevention
24 Services Act (Title VII, Div. E., Pub. L. No. 115-123) provided to

1 the family of a child who is a candidate for foster care to prevent
2 or eliminate the need to remove the child from and allow the child
3 to remain safely in the child's home.

4 (4) "Family preservation services plan" means a
5 written plan, based on a professional assessment and subject to the
6 Family First Prevention Services Act (Title VII, Div. E., Pub. L.
7 No. 115-123), listing the family preservation services to be
8 provided to the family of a child who is a candidate for foster
9 care.

10 (5) "Foster care" means substitute care as defined by
11 Section 263.001.

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

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

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

1 Sec. 262.403. COURT ORDER REQUIRED. The department must
2 obtain a court order to compel the family of a child who is a
3 candidate for foster care to obtain family preservation services
4 and complete the family preservation services plan.

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

9 (1) participate in the family preservation services
10 for which the department makes a referral or services the
11 department provides or purchases to:

12 (A) alleviate the effects of the abuse or neglect
13 that has occurred;

14 (B) reduce a continuing danger to the physical
15 health or safety of the child caused by an act or failure to act of
16 the parent, managing conservator, guardian, or other member of the
17 child's household; or

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

21 (2) permit the child and any siblings of the child to
22 receive the services; and

23 (3) complete all actions and services required under
24 the family preservation services plan.

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

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

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

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

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

9 (B) there is a continuing danger to the child's
10 physical health or safety caused by an act or failure to act of the
11 parent, managing conservator, guardian, or other member of the
12 child's household unless that person participates in family
13 preservation services requested by the department; and

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

16 (A) the process for the child to remain at home
17 with appropriate family preservation services instead of foster
18 care;

19 (B) the specific reasons the department should
20 provide family preservation services to the family; and

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

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

25 (f) The court shall hold a hearing on the petition not later
26 than the 14th day after the date the petition is filed unless the
27 court finds good cause for extending that date for not more than 14

1 days.

2 Sec. 262.405. AD LITEM APPOINTMENTS. (a) The court shall
3 appoint an attorney ad litem to represent the interests of the child
4 immediately after a suit is filed under Section 262.404 but before
5 the hearing to ensure adequate representation of the child. The
6 attorney ad litem for the child has the powers and duties of an
7 attorney ad litem for a child under Chapter 107.

8 (b) The court shall appoint an attorney ad litem to
9 represent the interests of a parent for whom participation in
10 family preservation services is being requested immediately after
11 the suit is filed but before the hearing to ensure adequate
12 representation of the parent. The attorney ad litem for the parent
13 has the powers and duties of an attorney ad litem for a parent under
14 Section 107.0131.

15 (c) Before the hearing commences, the court shall inform
16 each parent of:

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

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

22 (d) If a parent claims indigence, the court shall require
23 the parent to complete and file with the court an affidavit of
24 indigence. The court may consider additional evidence to determine
25 whether the parent is indigent, including evidence relating to the
26 parent's income, source of income, assets, property ownership,
27 benefits paid in accordance with a federal, state, or local public

1 assistance program, outstanding obligations, and necessary
2 expenses and the number and ages of the parent's dependents. If the
3 court finds the parent is indigent, the attorney ad litem appointed
4 to represent the interests of the parent may continue the
5 representation. If the court finds the parent is not indigent, the
6 court shall discharge the attorney ad litem from the appointment
7 after the hearing and order the parent to pay the cost of the
8 attorney ad litem's representation.

9 (e) The court may, for good cause shown, postpone any
10 subsequent proceedings for not more than seven days after the date
11 of the attorney ad litem's discharge to allow the parent to hire an
12 attorney or to provide the parent's attorney time to prepare for the
13 subsequent proceeding.

14 Sec. 262.406. COURT ORDER. (a) Except as provided by
15 Subsection (d), at the conclusion of the hearing in a suit filed
16 under Section 262.404, the court shall order the department to
17 provide family preservation services and to execute a family
18 preservation services plan developed in collaboration with the
19 family of the child who is a candidate for foster care if the court
20 finds by a preponderance of evidence that:

21 (1) abuse or neglect occurred or there is a
22 substantial risk of abuse or neglect or continuing danger to the
23 child's physical health or safety caused by an act or failure to act
24 of the parent, managing conservator, guardian, or other member of
25 the child's household;

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

1 (3) family preservation services are appropriate
2 based on the child's safety risk assessment and the child's family
3 assessment.

4 (b) The court's order for family preservation services
5 must:

6 (1) identify and require specific services narrowly
7 tailored to address the factors that make the child a candidate for
8 foster care; and

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

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

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

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

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

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

1 (c) The family preservation services plan must:

2 (1) include a safety risk assessment of the child who
3 is the subject of the investigation and an assessment of the child's
4 family;

5 (2) state the reasons the department is involved with
6 the family;

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

10 (4) list the specific family preservation services the
11 family will receive under the plan and identify the manner in which
12 those services will mitigate the child's specific risk factors and
13 allow the child to remain safely at home;

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

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

21 (d) The family preservation services plan must include the
22 following statement:

23 "TO THE PARENT OF THE CHILD SERVED BY THIS PLAN: THIS
24 DOCUMENT IS VERY IMPORTANT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR
25 CHILD WITH A SAFE ENVIRONMENT WITHIN THE REASONABLE PERIOD
26 SPECIFIED IN THIS PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE
27 YOUR CHILD WITH A SAFE ENVIRONMENT, YOUR CHILD MAY BE REMOVED FROM

1 YOU, AND YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS MAY BE
2 RESTRICTED OR TERMINATED. A COURT HEARING WILL BE HELD AT WHICH A
3 JUDGE WILL REVIEW THIS FAMILY PRESERVATION SERVICES PLAN."

4 Sec. 262.408. FAMILY PRESERVATION SERVICES PLAN: SIGNING
5 AND EFFECT. (a) The family of a child who is a candidate for foster
6 care and the department shall sign the family preservation services
7 plan, and the department shall submit a copy of the signed plan to
8 the court for review.

9 (b) If the family is unwilling to participate in the
10 development of the family preservation services plan, the
11 department may submit the plan to the court without the parents'
12 signatures.

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

18 (d) The family preservation services plan remains in effect
19 until:

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

23 (2) the date the plan is amended or revoked by the
24 court.

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

1 Sec. 262.409. AMENDED FAMILY PRESERVATION SERVICES PLAN.

2 (a) A family preservation services plan may be amended at any time.
3 The department or single source continuum contractor and the
4 parents of a child who is a candidate for foster care shall jointly
5 develop any amendment to the plan. The department or contractor
6 must inform the parents of their rights related to the amended
7 family preservation services plan process.

8 (b) The parents and the person preparing the amended family
9 preservation services plan shall sign the amended plan, and the
10 department or single source continuum contractor shall submit the
11 amended plan to the court for review.

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

16 (d) The amended family preservation services plan takes
17 effect on the date the court certifies that the amended plan
18 complies with the court's order for family preservation services
19 and is narrowly tailored to address the factors that make the child
20 a candidate for foster care. The court may hold a hearing to review
21 the amended plan for compliance.

22 (e) The amended family preservation services plan is in
23 effect until:

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

27 (2) the date the amended plan is modified or revoked by

1 the court.

2 Sec. 262.410. COURT IMPLEMENTATION OF FAMILY PRESERVATION
3 SERVICES PLAN. (a) After reviewing and certifying an original or
4 any amended family preservation services plan, the court shall
5 incorporate the original and any amended plan into the court's
6 order and may render additional appropriate orders to implement or
7 require compliance with an original or amended plan.

8 (b) In rendering an order, a court may omit any service
9 prescribed under the family preservation services plan that the
10 court finds is not appropriate or is not narrowly tailored to
11 address the factors that make the child a candidate for foster care
12 and place the child at risk of removal.

13 Sec. 262.411. SELECTION OF SERVICE PROVIDER. (a) A parent,
14 managing conservator, guardian, or other member of a household
15 ordered to participate in family preservation services under this
16 subchapter may obtain those services from a qualified provider
17 selected by the person.

18 (b) A parent, managing conservator, guardian, or other
19 member of a household who obtains family preservation services from
20 a provider selected by the person is responsible for the cost of
21 those services.

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

1 family preservation services.

2 Sec. 262.412. STATUS HEARING. Not later than the 90th day
3 after the date the court renders an order for family preservation
4 services under this subchapter, the court shall hold a hearing to
5 review the status of each person required to participate in the
6 services and of the child and to review the services provided,
7 purchased, or referred. The court shall set subsequent review
8 hearings every 90 days to review the continued need for the order.

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

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

17 (1) the court finds that:

18 (A) the extension is necessary to allow the
19 person required to participate in family preservation services
20 under the family preservation services plan time to complete those
21 services;

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

24 (C) the person made a good faith effort to
25 complete the services; and

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

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

4 Sec. 262.414. EXPIRATION OF ORDER. On expiration of a court
5 order for family preservation services under this subchapter, the
6 court shall dismiss the case.

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

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

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

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

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

26 (c) The department shall collaborate with a person selected
27 to provide family preservation services to identify children who

1 are candidates for foster care and to ensure that the services are
2 appropriate for children referred by the department.

3 Sec. 262.416. LIMIT ON FINANCE OF SERVICES. If a court
4 order for services under this subchapter includes services that are
5 not subject to the Family First Prevention Services Act (Title VII,
6 Div. E., Pub. L. No. 115-123), the order must identify a method of
7 financing for the services and the local jurisdiction that will pay
8 for the services.

9 Sec. 262.417. REPORT TO LEGISLATURE. Not later than the
10 first anniversary of the date the department implements a pilot
11 program under this subchapter and every two years after that date,
12 the department shall report on the progress of the pilot program to
13 the appropriate standing committees of the legislature having
14 jurisdiction over child protective services and foster care
15 matters. The report must include:

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

19 (2) data on performance-based outcomes achieved in the
20 child protective services region in which the pilot program is
21 implemented;

22 (3) a detailed comparison of outcomes achieved in the
23 child protective services region in which the pilot program is
24 implemented with outcomes achieved in other child protective
25 services regions;

26 (4) a detailed description of the costs of the pilot
27 program and services provided; and

1 (5) recommendations on whether to expand services
2 described in this subchapter to other child protective services
3 regions in this state based on the outcomes and performance of the
4 pilot program.

5 SECTION 2. Section 263.202(b), Family Code, is amended to
6 read as follows:

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

13 (1) a plan that has the goal of returning the child to
14 the child's parents adequately ensures that reasonable efforts are
15 made to enable the child's parents to provide a safe environment for
16 the child;

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

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

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

1 SECTION 3. Subchapter C, Chapter 264, Family Code, is
2 amended by adding Section 264.2031 to read as follows:

3 Sec. 264.2031. SELECTION OF SERVICE PROVIDER. (a) A
4 parent, managing conservator, guardian, or other member of a
5 household ordered to participate in services under Section
6 264.203(a) may obtain those services from a qualified provider
7 selected by the person.

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

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

18 SECTION 4. This Act takes effect September 1, 2021.