

By: Kolkhorst

S.B. No. 1930

A BILL TO BE ENTITLED

AN ACT

relating to policies and procedures regarding children placed by the Department of Family and Protective Services in a residential treatment center or qualified residential treatment program.

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

SECTION 1. Section 107.002, Family Code, is amended by amending Subsection (b) and adding Subsection (j) to read as follows:

(b) A guardian ad litem appointed for the child under this chapter shall:

(1) within a reasonable time after the appointment, interview:

(A) the child in a developmentally appropriate manner, if the child is four years of age or older;

(B) each person who has significant knowledge of the child's history and condition, including educators, child welfare service providers, and any foster parent of the child; and

(C) the parties to the suit;

(2) seek to elicit in a developmentally appropriate manner the child's:

(A) expressed objectives; and

(B) opinion of and concerns regarding the child's current or proposed placement;

(3) consider the child's expressed objectives without

1 being bound by those objectives;

2 (4) encourage settlement and the use of alternative
3 forms of dispute resolution; and

4 (5) perform any specific task directed by the court.

5 (j) If a child is or may be placed in a residential treatment
6 center as defined by Section 263.001, a qualified residential
7 treatment program as defined by Section 263.00201, or a similar
8 treatment setting, the guardian ad litem:

9 (1) shall:

10 (A) review any available information regarding
11 whether the placement is appropriate to meet the child's specific
12 needs;

13 (B) meet in person with the child before
14 providing a recommendation under Paragraph (C); and

15 (C) provide to the court by report or testimony a
16 recommendation regarding the placement that is in the best interest
17 of the child; and

18 (2) may, as appropriate:

19 (A) request a placement conference; and

20 (B) participate in any conferences conducted by
21 the Department of Family and Protective Services or the child's
22 treatment team related to initial and ongoing placement in a
23 residential treatment center, qualified residential treatment
24 program, or similar treatment setting unless there is good cause
25 shown for excluding the guardian ad litem.

26 SECTION 2. Section 107.004, Family Code, is amended by
27 adding Subsection (f) to read as follows:

1 (f) If a child is considered for placement in a residential
2 treatment center as defined by Section 263.001, a qualified
3 residential treatment program as defined by Section 263.00201, or a
4 similar treatment setting, the attorney ad litem:

5 (1) shall:

6 (A) review any available information related to
7 the child's needs, including the child and adolescent needs and
8 strengths assessment, any psychological evaluations, discharge
9 notices from current or past placements, recent incident reports,
10 and counseling notes;

11 (B) review any available information regarding
12 whether the placement is appropriate to meet the child's specific
13 needs;

14 (C) meet with the child before any hearing to
15 allow the attorney ad litem to:

16 (i) prepare for the hearing in accordance
17 with the child's expressed representation objectives; and

18 (ii) elicit, in a developmentally
19 appropriate manner, the child's opinion of and concerns regarding
20 the child's current or proposed placement;

21 (D) advise the child in a developmentally
22 appropriate manner regarding the department's request or
23 recommendation for placement and the likelihood of the request
24 being granted; and

25 (E) advocate to the court for the child's
26 specific desires regarding the requested placement in accordance
27 with Subsection (a)(2); and

1 (2) may, as appropriate:

2 (A) request a placement conference; and

3 (B) participate in any conferences conducted by
4 the Department of Family and Protective Services or the child's
5 treatment team related to initial and ongoing placement in a
6 residential treatment center, qualified residential treatment
7 program, or similar treatment setting.

8 SECTION 3. Section 107.0131(a), Family Code, is amended to
9 read as follows:

10 (a) An attorney ad litem appointed under Section 107.013 to
11 represent the interests of a parent:

12 (1) shall:

13 (A) subject to Rules 4.02, 4.03, and 4.04, Texas
14 Disciplinary Rules of Professional Conduct, and within a reasonable
15 time after the appointment, interview:

16 (i) the parent, unless the parent's
17 location is unknown;

18 (ii) each person who has significant
19 knowledge of the case; and

20 (iii) the parties to the suit;

21 (B) investigate the facts of the case;

22 (C) to ensure competent representation at
23 hearings, mediations, pretrial matters, and the trial on the
24 merits:

25 (i) obtain and review copies of all court
26 files in the suit during the attorney ad litem's course of
27 representation; and

1 (ii) when necessary, conduct formal
2 discovery under the Texas Rules of Civil Procedure or the discovery
3 control plan;

4 (D) take any action consistent with the parent's
5 interests that the attorney ad litem considers necessary to
6 expedite the proceedings;

7 (E) encourage settlement and the use of
8 alternative forms of dispute resolution;

9 (F) review and sign, or decline to sign, a
10 proposed or agreed order affecting the parent;

11 (G) meet before each court hearing with the
12 parent, unless the court:

13 (i) finds at that hearing that the attorney
14 ad litem has shown good cause why the attorney ad litem's compliance
15 is not feasible; or

16 (ii) on a showing of good cause, authorizes
17 the attorney ad litem to comply by conferring with the parent, as
18 appropriate, by telephone or video conference;

19 (H) abide by the parent's objectives for
20 representation;

21 (I) become familiar with the American Bar
22 Association's standards of practice for attorneys who represent
23 parents in abuse and neglect cases; and

24 (J) complete at least three hours of continuing
25 legal education relating to representing parents in child
26 protection cases as described by Subsection (b) as soon as
27 practicable after the attorney ad litem is appointed, unless the

1 court finds that the attorney ad litem has experience equivalent to
2 that education; and

3 (2) is entitled to:

4 (A) request clarification from the court if the
5 role of the attorney ad litem is ambiguous;

6 (B) request a hearing or trial on the merits;

7 (C) consent or refuse to consent to an interview
8 of the parent by another attorney;

9 (D) receive a copy of each pleading or other
10 paper filed with the court;

11 (E) receive notice of each hearing in the suit;

12 (F) participate in any case staffing conducted by
13 the Department of Family and Protective Services in which the
14 parent is invited to participate, including, as appropriate, a case
15 staffing to develop a family plan of service, a family group
16 conference, a permanency conference, a mediation, a case staffing
17 to plan for the discharge and return of the child to the parent, a
18 case staffing related to a placement in a residential treatment
19 center or qualified residential treatment program, and any other
20 case staffing that the department determines would be appropriate
21 for the parent to attend, but excluding any internal department
22 staffing or staffing between the department and the department's
23 legal representative; and

24 (G) attend all legal proceedings in the suit.

25 SECTION 4. Section 263.001(a), Family Code, is amended by
26 adding Subdivision (3-c) to read as follows:

27 (3-c) "Residential treatment center" means a general

1 residential operation licensed under Chapter 42, Human Resources
2 Code, that provides treatment services.

3 SECTION 5. Section 263.002, Family Code, is amended by
4 adding Subsections (e) and (f) to read as follows:

5 (e) If a child is placed or is referred to and awaiting
6 placement in a residential treatment center, the court shall
7 determine whether:

8 (1) the child's needs can be met through placement in a
9 family-like setting;

10 (2) the recommended or existing program can provide
11 the most effective and appropriate level of care for the child;

12 (3) the recommended or existing program is the least
13 restrictive setting consistent with the child's best interest and
14 individual needs; and

15 (4) the placement is consistent with the short-term
16 and long-term goals for the child, as specified by the child's
17 permanency plan.

18 (f) In making a determination under Subsection (e), the
19 court may consider:

20 (1) medical, psychological, or psychiatric
21 assessments;

22 (2) the child's current treatment plan and progress
23 being made;

24 (3) any significant medical, legal, or behavioral
25 incidents involving the child;

26 (4) the reasons for the child's discharge from any
27 previous placement or the child's current placement;

- 1 (5) the programs available at the facility to address
2 the child's needs;
3 (6) the program's plan to discharge the child after
4 treatment;
5 (7) whether there are other programs that more
6 effectively meet the child's needs; and
7 (8) any other information that would assist the court
8 in making the determination.

9 SECTION 6. 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 tailored to address any
2 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 (5) based on the court's determination under Section
6 263.002, continued placement is appropriate if the child is placed
7 in a residential treatment center; and

8 (6) based on the court's determination under Section
9 263.00201, continued placement is appropriate if the child is
10 placed in a qualified residential treatment program.

11 SECTION 7. Section 263.306(a-1), Family Code, is amended to
12 read as follows:

13 (a-1) At each permanency hearing before a final order is
14 rendered, the court shall:

15 (1) identify all persons and parties present at the
16 hearing;

17 (2) review the efforts of the department or other
18 agency in:

19 (A) locating and requesting service of citation
20 on all persons entitled to service of citation under Section
21 102.009; and

22 (B) obtaining the assistance of a parent in
23 providing information necessary to locate an absent parent, alleged
24 father, relative of the child, or other adult identified by the
25 child as a potential relative or designated caregiver;

26 (3) ask all parties present whether the child or the
27 child's family has a Native American heritage and identify any

1 Native American tribe with which the child may be associated;

2 (4) review the extent of the parties' compliance with
3 temporary orders and the service plan and the extent to which
4 progress has been made toward alleviating or mitigating the causes
5 necessitating the placement of the child in foster care;

6 (5) review the permanency progress report to
7 determine:

8 (A) the safety and well-being of the child and
9 whether the child's needs, including any medical or special needs,
10 are being adequately addressed;

11 (B) the continuing necessity and appropriateness
12 of the placement of the child, including with respect to a child who
13 has been placed outside of this state, whether the placement
14 continues to be in the best interest of the child;

15 (C) the appropriateness of the primary and
16 alternative permanency goals for the child developed in accordance
17 with department rule and whether the department has made reasonable
18 efforts to finalize the permanency plan, including the concurrent
19 permanency goals, in effect for the child;

20 (D) whether the child has been provided the
21 opportunity, in a developmentally appropriate manner, to express
22 the child's opinion on any medical care provided;

23 (E) whether the child has been provided the
24 opportunity, in a developmentally appropriate manner, to identify
25 any adults, particularly an adult residing in the child's
26 community, who could be a relative or designated caregiver for the
27 child;

1 (F) for a child receiving psychotropic
2 medication, whether the child:

3 (i) has been provided appropriate
4 nonpharmacological interventions, therapies, or strategies to meet
5 the child's needs; or

6 (ii) has been seen by the prescribing
7 physician, physician assistant, or advanced practice nurse at least
8 once every 90 days;

9 (G) whether an education decision-maker for the
10 child has been identified, the child's education needs and goals
11 have been identified and addressed, and there have been major
12 changes in the child's school performance or there have been
13 serious disciplinary events;

14 (H) for a child 14 years of age or older, whether
15 services that are needed to assist the child in transitioning from
16 substitute care to independent living are available in the child's
17 community; ~~and~~

18 (I) for a child whose permanency goal is another
19 planned permanent living arrangement:

20 (i) the desired permanency outcome for the
21 child, by asking the child;

22 (ii) whether, as of the date of the hearing,
23 another planned permanent living arrangement is the best permanency
24 plan for the child and, if so, provide compelling reasons why it
25 continues to not be in the best interest of the child to:

26 (a) return home;

27 (b) be placed for adoption;

1 (c) be placed with a legal guardian;
2 or

3 (d) be placed with a fit and willing
4 relative;

5 (iii) whether the department has conducted
6 an independent living skills assessment under Section
7 [264.121\(a-3\)](#);

8 (iv) whether the department has addressed
9 the goals identified in the child's permanency plan, including the
10 child's housing plan, and the results of the independent living
11 skills assessment;

12 (v) if the youth is 16 years of age or
13 older, whether there is evidence that the department has provided
14 the youth with the documents and information listed in Section
15 [264.121\(e\)](#); and

16 (vi) if the youth is 18 years of age or
17 older or has had the disabilities of minority removed, whether
18 there is evidence that the department has provided the youth with
19 the documents and information listed in Section [264.121\(e-1\)](#);

20 (J) based on the court's determination under
21 Section [263.002](#), whether continued placement is appropriate if the
22 child is placed in a residential treatment center; and

23 (K) based on the court's determination under
24 Section [263.00201](#), whether continued placement is appropriate if
25 the child is placed in a qualified residential treatment program;

26 (6) determine whether to return the child to the
27 child's parents if the child's parents are willing and able to

1 provide the child with a safe environment and the return of the
2 child is in the child's best interest;

3 (7) estimate a likely date by which the child may be
4 returned to and safely maintained in the child's home, placed for
5 adoption, or placed in permanent managing conservatorship; and

6 (8) announce in open court the dismissal date and the
7 date of any upcoming hearings.

8 SECTION 8. Section 263.5031(a), Family Code, is amended to
9 read as follows:

10 (a) At each permanency hearing after the court renders a
11 final order, the court shall:

12 (1) identify all persons and parties present at the
13 hearing;

14 (2) review the efforts of the department or other
15 agency in notifying persons entitled to notice under Section
16 263.0021;

17 (3) for a child placed with a relative of the child or
18 other designated caregiver, review the efforts of the department to
19 inform the caregiver of:

20 (A) the option to become verified by a licensed
21 child-placing agency to operate an agency foster home, if
22 applicable; and

23 (B) the permanency care assistance program under
24 Subchapter K, Chapter 264; and

25 (4) review the permanency progress report to
26 determine:

27 (A) the safety and well-being of the child and

1 whether the child's needs, including any medical or special needs,
2 are being adequately addressed;

3 (B) whether the child has been provided the
4 opportunity, in a developmentally appropriate manner, to identify
5 any adult, particularly an adult residing in the child's community,
6 who could be a relative or designated caregiver for the child;

7 (C) whether the department placed the child with
8 a relative or designated caregiver and the continuing necessity and
9 appropriateness of the placement of the child, including with
10 respect to a child who has been placed outside of this state,
11 whether the placement continues to be in the best interest of the
12 child;

13 (D) if the child is placed in institutional care,
14 whether efforts have been made to ensure that the child is placed in
15 the least restrictive environment consistent with the child's best
16 interest and special needs;

17 (E) the appropriateness of the primary and
18 alternative permanency goals for the child, whether the department
19 has made reasonable efforts to finalize the permanency plan,
20 including the concurrent permanency goals, in effect for the child,
21 and whether:

22 (i) the department has exercised due
23 diligence in attempting to place the child for adoption if parental
24 rights to the child have been terminated and the child is eligible
25 for adoption; or

26 (ii) another permanent placement,
27 including appointing a relative as permanent managing conservator

1 or returning the child to a parent, is appropriate for the child;

2 (F) for a child whose permanency goal is another
3 planned permanent living arrangement:

4 (i) the desired permanency outcome for the
5 child, by asking the child;

6 (ii) whether, as of the date of the hearing,
7 another planned permanent living arrangement is the best permanency
8 plan for the child and, if so, provide compelling reasons why it
9 continues to not be in the best interest of the child to:

10 (a) return home;

11 (b) be placed for adoption;

12 (c) be placed with a legal guardian;

13 or

14 (d) be placed with a fit and willing
15 relative;

16 (iii) whether the department has conducted
17 an independent living skills assessment under Section
18 [264.121\(a-3\)](#);

19 (iv) whether the department has addressed
20 the goals identified in the child's permanency plan, including the
21 child's housing plan, and the results of the independent living
22 skills assessment;

23 (v) if the youth is 16 years of age or
24 older, whether there is evidence that the department has provided
25 the youth with the documents and information listed in Section
26 [264.121\(e\)](#); and

27 (vi) if the youth is 18 years of age or

1 older or has had the disabilities of minority removed, whether
2 there is evidence that the department has provided the youth with
3 the documents and information listed in Section 264.121(e-1);

4 (G) if the child is 14 years of age or older,
5 whether services that are needed to assist the child in
6 transitioning from substitute care to independent living are
7 available in the child's community;

8 (H) whether the child is receiving appropriate
9 medical care and has been provided the opportunity, in a
10 developmentally appropriate manner, to express the child's opinion
11 on any medical care provided;

12 (I) for a child receiving psychotropic
13 medication, whether the child:

14 (i) has been provided appropriate
15 nonpharmacological interventions, therapies, or strategies to meet
16 the child's needs; or

17 (ii) has been seen by the prescribing
18 physician, physician assistant, or advanced practice nurse at least
19 once every 90 days;

20 (J) whether an education decision-maker for the
21 child has been identified, the child's education needs and goals
22 have been identified and addressed, and there are major changes in
23 the child's school performance or there have been serious
24 disciplinary events;

25 (K) for a child for whom the department has been
26 named managing conservator in a final order that does not include
27 termination of parental rights, whether to order the department to

1 provide services to a parent for not more than six months after the
2 date of the permanency hearing if:

3 (i) the child has not been placed with a
4 relative or other individual, including a foster parent, who is
5 seeking permanent managing conservatorship of the child; and

6 (ii) the court determines that further
7 efforts at reunification with a parent are:

8 (a) in the best interest of the child;
9 and

10 (b) likely to result in the child's
11 safe return to the child's parent; ~~and~~

12 (L) whether the department has identified a
13 family or other caring adult who has made a permanent commitment to
14 the child;

15 (M) based on the court's determination under
16 Section 263.002, whether continued placement is appropriate if the
17 child is placed in a residential treatment center; and

18 (N) based on the court's determination under
19 Section 263.00201, whether continued placement is appropriate if
20 the child is placed in a qualified residential treatment program.

21 SECTION 9. Section 264.018(a)(5), Family Code, is amended
22 to read as follows:

23 (5) "Significant event" means:

24 (A) a placement change, including failure by the
25 department to locate an appropriate placement for at least one
26 night;

27 (B) a significant change in medical condition;

1 (C) an initial prescription of a psychotropic
2 medication or a change in dosage of a psychotropic medication;

3 (D) a major change in school performance or a
4 serious disciplinary event at school;

5 (E) a placement in a qualified residential
6 treatment program as that term is defined by 42 U.S.C. Section
7 672(k)(4) or placement in a residential treatment center as defined
8 by Section 263.001, including meetings or conferences to determine
9 the appropriateness of such a placement; or

10 (F) any event determined to be significant under
11 department rule.

12 SECTION 10. This Act takes effect September 1, 2023.