

## **BILL ANALYSIS**

Senate Research Center

S.B. 40  
By: Zaffirini  
Health and Human Services  
7/6/2005  
Enrolled

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Under current rules and statutes, the staff at residential care facilities for the mentally retarded retain the responsibility for conducting permanency planning activities for children residing at those institutions. This presents an inherent conflict of interest. A facility that receives funding for keeping a child in a bed may not devote time, energy, and financial resources to developing the community supports needed to move a child to a family. As long as the permanency planning authority is retained by the facility/institution, there is little likelihood that children residing in those facilities will actually have the opportunity to return to their birth-families or access family-based alternatives.

S.B. 40 requires agencies to separate the responsibility and authority for permanency planning for children with disabilities from the institutions in which they reside. Under current law, separation of responsibility for permanency planning is permissive, and S.B. 40 makes it mandatory.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 531.153, Government Code, by amending Subsection (d) and adding Subsections (d-1) and (d-2), as follows:

(d) Requires, rather than authorizes, the Department of Aging and Disability Services (department), rather than the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation and the Department of Protective and Regulatory Services, in implementing permanency planning procedures, to use one of three options. Modifies one of these options to require the department to contract with a private entity other than one that provides long-term institutional care, rather than one that provides mental retardation services, to develop a permanency plan for certain children. Adds an option to require the department to perform the department's duties regarding permanency planning proceedings using department personnel. Makes nonsubstantive and conforming changes.

(d-1) Requires a contract or memorandum of understanding with the local mental retardation authority developing the permanency plan for certain children to include performance measures by which the department may evaluate the effectiveness of the permanency planning efforts of the local mental retardation authority, private entity, or agency staff.

(d-2) Requires the department, in implementing permanency planning procedures to develop a permanency plan for certain children, to engage in appropriate activities in addition to those required by Subsection (d) to minimize certain potential conflicts of interest. Provides that a potential conflict of interest could occur between the institution in which the child resides or in which the institutional care is sought for the child, rather than the child's mental retardation services provider, and the best interest of the child. Redesignates existing Subdivision (d)(3) to Subsection (d-2). Makes conforming changes.

SECTION 2. Amends Subchapter D-1, Chapter 531, Government Code, by adding Sections 531.1531 and 531.1532, as follows:

Sec. 531.1531. ASSISTANCE WITH PERMANENCY PLANNING EFFORTS. Requires an institution in which a child resides to assist with providing effective permanency planning for the child and sets forth the ways in which the institution is required to assist.

Sec. 531.1532. INTERFERENCE WITH PERMANENCY PLANNING EFFORTS. Requires an entity that provides information to a child's parent or guardian relating to permanency planning to refrain from providing such individuals inaccurate or misleading information regarding the risks of moving the child to another facility or community setting.

SECTION 3. Amends Section 531.161, Government Code, to require each institution in which a child resides to allow the commission, appropriate health and human services agencies, and to the extent not otherwise prohibited by state or federal confidentiality laws, a local mental retardation authority or private entity that enters into a contract or memorandum of understanding to develop a permanency plan for the child, to have access to the child's records to assist in complying with the requirements of this subchapter.

SECTION 4. Authorizes delay of implementation until necessary federal waivers or authorizations are obtained.

SECTION 5. Effective date: September 1, 2005.