

By: Dutton

H.B. No. 1014

A BILL TO BE ENTITLED

AN ACT

relating to investigations and other procedures with respect to allegations of child abuse or neglect.

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

SECTION 1. Section 261.302, Family Code, is amended by amending Subsections (a) and (e) and adding Subsections (f), (g), and (h) to read as follows:

(a) The investigation may include:

(1) a visit to the child's home, unless the alleged abuse or neglect can be confirmed or ~~[clearly]~~ ruled out without a home visit; and

(2) an interview with and examination of the subject child, unless the investigating agency suspects or has reason to suspect the child has been psychologically, emotionally, or sexually abused ~~[which may include a medical, psychological, or psychiatric examination]~~.

(e) An interview with a child conducted by the department or another person under the direction of the department, other than a law enforcement agency investigator, ~~[alleged to be a victim of physical abuse or sexual abuse]~~ shall be audiotaped or videotaped during the investigative stage ~~[unless the investigating agency determines that good cause exists for not audiotaping or videotaping the interview in accordance with rules of the agency. Good cause may include, but is not limited to, such considerations~~

1 ~~as the age of the child and the nature and seriousness of the~~
2 ~~allegations under investigation. Nothing in this subsection shall~~
3 ~~be construed as prohibiting the investigating agency from~~
4 ~~audiotaping or videotaping an interview of a child on any case for~~
5 ~~which such audiotaping or videotaping is not required under this~~
6 ~~subsection].~~ The department or other entity shall preserve a
7 recording of each initial telephone call by a person reporting
8 abuse or neglect of a child. The department shall record and
9 preserve all interviews and documents pertaining to an
10 investigation, including original notes. The fact that the
11 investigating agency failed to audiotape or videotape an interview
12 is admissible at the trial of the offense that is the subject of the
13 interview.

14 (f) Except as provided by Subsection (g), an investigation
15 that includes an examination of the subject child as authorized by
16 Subsection (a)(2) may not include a medical, psychological, or
17 psychiatric examination of the child unless:

18 (1) the child's parent, conservator, or legal guardian
19 consents in writing to the examination; or

20 (2) a court orders the examination.

21 (g) If during the investigation a representative of a law
22 enforcement agency is not present and the department investigator
23 believes that a child needs emergency medical attention before a
24 law enforcement agency representative could arrive, the
25 investigator may call for assistance from emergency medical
26 services personnel, as defined by Section 773.003, Health and
27 Safety Code. Emergency medical services personnel may examine and

1 provide emergency medical services to the child, but the department
2 may not conduct any other medical, psychological, or psychiatric
3 examination of the child, unless the examination is permitted under
4 Subsection (f).

5 (h) This section may not be construed to limit the authority
6 of a law enforcement agency to perform the agency's duties under any
7 other law.

8 SECTION 2. Sections 261.310(a) and (d), Family Code, are
9 amended to read as follows:

10 (a) The department shall by rule develop and adopt
11 ~~[voluntary]~~ standards for persons who investigate suspected child
12 abuse or neglect at the state or local level. The standards shall
13 encourage professionalism and consistency in the investigation of
14 suspected child abuse or neglect.

15 (d) The standards shall ~~[recommend]~~:

16 (1) recommend that videotaped and audiotaped
17 interviews ~~[with a suspected victim]~~ be uninterrupted;

18 (2) recommend a maximum number of interviews with and
19 examinations of a suspected victim;

20 (3) provide procedures to preserve evidence,
21 including the intake telephone calls, original notes, videotapes,
22 and audiotapes, for one year from the later of the date the evidence
23 is created or the date of a final judgment in a suit filed in a case
24 for which the evidence is created; and

25 (4) provide that an investigator of suspected child
26 abuse or neglect make a reasonable effort to locate and inform each
27 parent of a child of any report of abuse or neglect relating to the

1 child.

2 SECTION 3. Subchapter B, Chapter 262, Family Code, is
3 amended by adding Sections 262.1001 and 262.1002 to read as
4 follows:

5 Sec. 262.1001. DESIGNATION OF ALTERNATIVE PLACEMENT OF
6 CHILD. (a) Because placing a child in the care of a person
7 designated by the child's parent, conservator, or legal guardian is
8 in the child's best interest, a governmental entity that determines
9 after an investigation that a child should be removed from the
10 child's home and that a suit affecting the parent-child
11 relationship has been or will be filed by the entity as provided by
12 this chapter with regard to the child, shall:

13 (1) inform the child's parent, conservator, or legal
14 guardian that the person may designate another person to care for
15 the child preceding the filing of and during the pendency of a suit
16 affecting the parent-child relationship; and

17 (2) if a designation is made under Subdivision (1),
18 place the child in the care of the person designated by the parent,
19 conservator, or legal guardian within a four-hour period after the
20 designation is made, a criminal history background check is
21 received by the entity that shows that the person is an acceptable
22 placement, and the person agrees to the terms of the placement,
23 except as provided by Section 262.1002.

24 (b) If the parent, conservator, or legal guardian of the
25 child designates a person to care for the child under Subsection
26 (a)(1), the department shall assume custody of the child during the
27 time in which the qualifications of the designated person are

1 determined. If the parent, conservator, or legal guardian of the
2 child is unable or unwilling to designate a person under Subsection
3 (a)(1), or if the designated person is unqualified under Section
4 262.1002, the department shall assume custody of the child.

5 (c) The right of the parent, conservator, or legal guardian
6 of the child to designate the person with whom the child is placed
7 preceding the filing of and during the pendency of a suit affecting
8 the parent-child relationship continues until the court terminates
9 the person's parent-child relationship with respect to the child,
10 appoints a permanent managing conservator of the child, or orders
11 that the child be returned to the child's home. The parent,
12 conservator, or legal guardian may make a subsequent designation in
13 accordance with this section, and the department shall place the
14 child with the person subsequently designated, if the child is
15 removed from the care of a person who was previously designated.

16 (d) A governmental entity that places a child with a person
17 designated by the child's parent, conservator, or legal guardian as
18 provided by this section shall:

19 (1) develop a written child protection plan for the
20 child as provided by Subsection (e);

21 (2) provide to the person designated by the child's
22 parent, conservator, or legal guardian a copy of the child
23 protection plan in a language understandable by the person and
24 explain the plan to the person in that language; and

25 (3) if the child is being regularly breast-fed, to the
26 extent possible, provide to the child's mother scheduled visitation
27 periods at appropriate intervals to allow the mother to continue

1 breast-feeding the child, unless the court finds after a hearing
2 that the mother is not fit for these visitation periods.

3 (e) The child protection plan required by Subsection (d)
4 must include reasonable restrictions on contacts with the child and
5 other terms designed to reasonably ensure the safety of the child.
6 The plan must be signed by the department, the designated person,
7 and each member of the designated person's household who is at least
8 18 years of age. Each person who signs the plan must agree that if
9 there is an alleged violation of the plan, all parties will attend
10 an emergency court hearing to be held not later than the 30th day
11 after the date a motion alleging the violation is filed. At the
12 conclusion of the hearing, the court shall determine whether a
13 violation of the plan has occurred and issue necessary orders to
14 restore compliance with the plan or place the child in the custody
15 of the department. The child protection plan is not a service plan
16 under Chapter 263.

17 (f) At each hearing conducted under this chapter or in a
18 suit affecting the parent-child relationship filed under this
19 chapter, the court shall inform the child's parent, conservator, or
20 legal guardian orally and in writing of that person's right under
21 this section to designate the person with whom the child is placed.

22 Sec. 262.1002. LIMITATION ON PLACEMENT WITH DESIGNATED
23 PERSON. (a) Except as provided by Subsection (c), the department
24 may not place a child with a person designated by the child's
25 parent, conservator, or legal guardian under Section 262.1001 if
26 the department determines that the designated person or another
27 person in the designated person's household:

1 (1) is registered in the department's statewide
2 central registry system with a finding that the department
3 confirmed, had reason to believe, or could not determine that the
4 parent abused or neglected a child;

5 (2) is the subject of a report of abuse or neglect of a
6 child being investigated by the department;

7 (3) has been found to have committed family violence
8 and is or has been the subject of a protective order rendered under
9 Title 4;

10 (4) has been convicted of a felony, is under
11 indictment for or charged with an offense punishable as a felony, or
12 is under investigation by a state or federal law enforcement agency
13 for an offense punishable as a felony; or

14 (5) has previously voluntarily relinquished parental
15 rights as the result of an allegation of child abuse or neglect.

16 (b) The department may request a law enforcement agency to
17 conduct a criminal background check on the designated person or any
18 other person in the designated person's household.

19 (c) The department may place a child with a designated
20 person prohibited from placement under Subsection (a) if the
21 department determines that placement of the child with the
22 designated person will not endanger the child. The child
23 protection plan under Section 262.1001(e) must address any issues
24 with regard to the placement of the child under this subsection.

25 (d) If the department determines that the designated person
26 under Section 262.1001 is not an appropriate placement for the
27 child, the parent, conservator, or legal guardian of the child may

1 request a hearing to be held not later than the 30th day after the
2 date the department provides the parent, conservator, or legal
3 guardian with written notice stating the department's objections to
4 the placement.

5 SECTION 4. Sections 262.112(a) and (b), Family Code, are
6 amended to read as follows:

7 (a) The Department of Protective and Regulatory Services
8 and the parent, conservator, or legal guardian are [is] entitled to
9 an expedited hearing under this chapter in any proceeding in which a
10 hearing is required if the department determines that a child
11 should be removed from the child's home because of an immediate
12 danger to the physical health or safety of the child.

13 (b) In any proceeding in which an expedited hearing is held
14 under Subsection (a), the department, parent, conservator,
15 guardian, or other party to the proceeding is entitled to an
16 expedited appeal on a ruling by a court that the child may or may not
17 be removed from the child's home.

18 SECTION 5. Sections 263.103(a) and (d), Family Code, are
19 amended to read as follows:

20 (a) Before the service plan is signed, the child's parents
21 and the representative of the department or other agency shall
22 discuss each term and condition of the plan. The representative
23 shall inform the parents that before a service plan may be required,
24 a suit affecting the parent-child relationship must be filed and
25 the department must obtain court authorization.

26 (d) The plan takes effect when[+
27 [~~1~~] the child's parents and the appropriate

1 representative of the department or other authorized agency sign
2 the plan. If the child's parents refuse to sign the plan, a motion
3 may be filed by any party for a hearing at which the court shall
4 either accept the plan or modify the plan based on the testimony of
5 the parties [~~or~~

6 ~~(2) the department or other authorized agency files~~
7 ~~the plan without the parents' signatures~~]. If the court's
8 determination under this subsection is not accepted by all parties,
9 the parties are entitled to an expedited appeal of the court's
10 order.

11 SECTION 6. Sections 261.302 and 262.112, Family Code, as
12 amended by this Act, apply only to an investigation of an allegation
13 of child abuse or neglect initiated on or after the effective date
14 of this Act. An investigation of an allegation of child abuse or
15 neglect initiated before the effective date of this Act is governed
16 by the law in effect on the date the investigation was initiated,
17 and the former law is continued in effect for that purpose.

18 SECTION 7. Sections 262.1001 and 262.1002, Family Code, as
19 added by this Act, apply only to the removal of a child from the
20 child's residence that occurs on or after the effective date of this
21 Act. The removal of a child from the child's residence that
22 occurred before the effective date of this Act is governed by the
23 law in effect on the date the child was removed, and the former law
24 is continued in effect for that purpose.

25 SECTION 8. Section 263.103, Family Code, as amended by this
26 Act, applies only to a suit affecting the parent-child relationship
27 filed on or after the effective date of this Act. A suit filed

1 before the effective date of this Act is governed by the law in
2 effect on the date the suit was filed, and the former law is
3 continued in effect for that purpose.

4 SECTION 9. This Act takes effect September 1, 2005.