

By: Rodriguez, Hupp, Davis of Harris

H.B. No. 2579

A BILL TO BE ENTITLED

AN ACT

relating to procedures to ensure the involvement of parents or guardians of children placed in certain institutions.

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

SECTION 1. Subchapter D-1, Chapter 531, Government Code, is amended by adding Sections 531.1521, 531.1532, 531.1591, and 531.164-531.167 to read as follows:

Sec. 531.1521. PREADMISSION INFORMATION. (a) The executive commissioner by rule shall develop and implement a system by which the Department of Aging and Disability Services ensures that, for each child with respect to whom the department or a local mental retardation authority is notified of a request for placement in an institution, the child's parent or guardian is fully informed before the child is placed in the institution of all community-based services and any other service and support options for which the child is eligible. The system must be designed to ensure that the department provides the information through:

(1) a local mental retardation authority;

(2) any private entity that has knowledge and expertise regarding the needs of and full spectrum of care options available to children with disabilities as well as the philosophy and purpose of permanency planning; or

(3) a department employee.

(b) An institution in which a child's parent or guardian is

1 considering placing the child may provide information required
2 under Subsection (a), but the information must also be provided by a
3 local mental retardation authority, private entity, or employee of
4 the Department of Aging and Disability Services as required by
5 Subsection (a).

6 (c) The Department of Aging and Disability Services shall
7 develop comprehensive information consistent with the policy
8 stated in Section 531.152 to explain to a parent or guardian
9 considering placing a child in an institution:

10 (1) options for community-based services;

11 (2) the benefits to the child of living in a family or
12 community setting;

13 (3) that the placement of the child in an institution
14 is considered temporary in accordance with Section 531.159; and

15 (4) that an ongoing permanency planning process is
16 required under this subchapter and other state law.

17 (d) Except as otherwise provided by this subsection and
18 Subsection (e), the Department of Aging and Disability Services
19 shall ensure that, not later than the 14th working day after the
20 date the department is notified of a request for the placement of a
21 child in an institution, the child's parent or guardian is provided
22 the information described by Subsections (a) and (c). The
23 department may provide the information after the 14th working day
24 after the date the department is notified of the request if the
25 child's parent or guardian waives the requirement that the
26 information be provided within the period otherwise required by
27 this subsection.

1 (e) The requirements of this section do not apply to a
2 request for the placement of a child in an institution if the child:

3 (1) is involved in an emergency situation, as defined
4 by rules adopted by the executive commissioner; or

5 (2) has been committed to an institution under Chapter
6 46B, Code of Criminal Procedure, or Chapter 55, Family Code.

7 Sec. 531.1532. REQUIREMENTS ON ADMISSIONS OF CHILDREN TO
8 CERTAIN INSTITUTIONS. On the admission of a child to an institution
9 described by Section 531.151(3)(A), (B), or (D), the Department of
10 Aging and Disability Services shall require the child's parent or
11 guardian to submit:

12 (1) an admission form that includes:

13 (A) the parent's or guardian's:

14 (i) name, address, and telephone number;

15 (ii) driver's license number and state of
16 issuance or personal identification card number issued by the
17 Department of Public Safety; and

18 (iii) place of employment and the
19 employer's address and telephone number; and

20 (B) the name, address, and telephone number of a
21 relative of the child or other person whom the department or
22 institution may contact in an emergency, a statement indicating the
23 relation between that person and the child, and at the parent's or
24 guardian's option, that person's:

25 (i) driver's license number and state of
26 issuance or personal identification card number issued by the
27 Department of Public Safety; and

1 (ii) the name, address, and telephone
2 number of that person's employer; and

3 (2) a signed acknowledgment of responsibility stating
4 that the parent or guardian agrees to:

5 (A) notify the institution in which the child is
6 placed of any changes to the information submitted under
7 Subdivision (1)(A); and

8 (B) make every effort to participate in the
9 child's life and in planning activities for the child.

10 Sec. 531.1591. ANNUAL REAUTHORIZATION OF PLANS OF CARE FOR
11 CERTAIN CHILDREN. (a) The executive commissioner shall adopt
12 rules under which the Department of Aging and Disability Services
13 requires a nursing facility in which a child resides to request from
14 the child's parent or guardian a written reauthorization of the
15 child's plan of care.

16 (b) The rules adopted under this section must require that
17 the written reauthorization be requested annually.

18 Sec. 531.164. DUTIES OF CERTAIN INSTITUTIONS. (a) This
19 section applies only to an institution described by Section
20 531.151(3)(A), (B), or (D).

21 (b) An institution described by Section 531.151(3)(A) or
22 (B) shall notify the local mental retardation authority for the
23 region in which the institution is located of a request for
24 placement of a child in the institution. An institution described
25 by Section 531.151(3)(D) shall notify the Department of Aging and
26 Disability Services of a request for placement of a child in the
27 institution.

1 (c) An institution must make reasonable accommodations to
2 promote the participation of the parent or guardian of a child
3 residing in the institution in all planning and decision-making
4 regarding the child's care, including participation in:

5 (1) the initial development of the child's permanency
6 plan and periodic review of the plan;

7 (2) an annual review and reauthorization of the
8 child's service plan;

9 (3) decision-making regarding the child's medical
10 care;

11 (4) routine interdisciplinary team meetings; and

12 (5) decision-making and other activities involving
13 the child's health and safety.

14 (d) Reasonable accommodations that an institution must make
15 under this section include:

16 (1) conducting a meeting in person or by telephone, as
17 mutually agreed upon by the institution and the parent or guardian;

18 (2) conducting a meeting at a time and, if the meeting
19 is in person, at a location that is mutually agreed upon by the
20 institution and the parent or guardian;

21 (3) if a parent or guardian has a disability,
22 providing reasonable accommodations in accordance with the
23 Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.),
24 including providing an accessible meeting location or a sign
25 language interpreter, as applicable; and

26 (4) providing a language interpreter, if applicable.

27 (e) Except as otherwise provided by Subsection (f):

1 (1) an ICF-MR must:

2 (A) attempt to notify the parent or guardian of a
3 child who resides in the ICF-MR in writing of a periodic permanency
4 planning meeting or annual service plan review and reauthorization
5 meeting not later than the 21st day before the date the meeting is
6 scheduled to be held; and

7 (B) request a response from the parent or
8 guardian; and

9 (2) a nursing facility must:

10 (A) attempt to notify the parent or guardian of a
11 child who resides in the facility in writing of an annual service
12 plan review and reauthorization meeting not later than the 21st day
13 before the date the meeting is scheduled to be held; and

14 (B) request a response from the parent or
15 guardian.

16 (f) If an emergency situation involving a child residing in
17 an ICF-MR or nursing facility occurs, the ICF-MR or nursing
18 facility, as applicable, must:

19 (1) attempt to notify the child's parent or guardian as
20 soon as possible; and

21 (2) request a response from the parent or guardian.

22 (g) If a child's parent or guardian does not respond to a
23 notice under Subsection (e) or (f), the ICF-MR or nursing facility,
24 as applicable, must attempt to locate the parent or guardian by
25 contacting another person whose information was provided by the
26 parent or guardian under Section 531.1532(1)(B).

27 (h) Not later than the 30th day after the date an ICF-MR or

1 nursing facility determines that it is unable to locate a child's
2 parent or guardian for participation in activities listed under
3 Subsection (e)(1) or (2), the ICF-MR or nursing facility must
4 notify the Department of Aging and Disability Services of that
5 determination and request that the department initiate a search for
6 the child's parent or guardian.

7 Sec. 531.165. SEARCH FOR PARENT OR GUARDIAN OF A CHILD. (a)

8 The Department of Aging and Disability Services shall develop and
9 implement a process by which the department, on receipt of
10 notification under Section 531.164(h) that a child's parent or
11 guardian cannot be located, conducts a search for the parent or
12 guardian. If, on the first anniversary of the date the department
13 receives the notification under Section 531.164(h), the department
14 has been unsuccessful in locating the parent or guardian, the
15 department shall refer the case to:

16 (1) the child protective services division of the
17 Department of Family and Protective Services if the child is 17
18 years of age or younger; or

19 (2) the adult protective services division of the
20 Department of Family and Protective Services if the child is 18
21 years of age or older.

22 (b) On receipt of a referral under Subsection (a)(1), the
23 child protective services division of the Department of Family and
24 Protective Services shall exercise intense due diligence in
25 attempting to locate the child's parent or guardian. If the
26 division is unable to locate the child's parent or guardian, the
27 department shall file a suit affecting the parent-child

1 relationship requesting an order appointing the department as the
2 child's temporary managing conservator.

3 (c) A child is considered abandoned for purposes of the
4 Family Code if the child's parent or guardian cannot be located
5 following the exercise of intense due diligence in attempting to
6 locate the parent or guardian by the Department of Family and
7 Protective Services under Subsection (b).

8 (d) On receipt of a referral under Subsection (a)(2), the
9 adult protective services division of the Department of Family and
10 Protective Services shall notify the court that appointed the
11 child's guardian that the guardian cannot be located.

12 Sec. 531.166. TRANSFER OF CHILD BETWEEN INSTITUTIONS. (a)
13 This section applies only to an institution described by Section
14 531.151(3)(A), (B), or (D) in which a child resides.

15 (b) Before transferring a child who is 17 years of age or
16 younger, or a child who is at least 18 years of age and for whom a
17 guardian has been appointed, from one institution to another
18 institution, the institution in which the child resides must
19 attempt to obtain consent for the transfer from the child's parent
20 or guardian unless the transfer is in response to an emergency
21 situation, as defined by rules adopted by the executive
22 commissioner.

23 Sec. 531.167. COLLECTION OF INFORMATION REGARDING
24 INVOLVEMENT OF CERTAIN PARENTS AND GUARDIANS. (a) The Department
25 of Aging and Disability Services shall collect and maintain
26 aggregate information regarding the involvement of parents and
27 guardians of children residing in institutions described by

1 Sections 531.151(3)(A), (B), and (D) in the lives of and planning
2 activities relating to those children. The department shall obtain
3 input from stakeholders concerning the types of information that
4 are most useful in assessing the involvement of those parents and
5 guardians.

6 (b) The Department of Aging and Disability Services shall
7 make the aggregate information available to the public on request.

8 SECTION 2. Not later than September 1, 2006:

9 (1) the executive commissioner of the Health and Human
10 Services Commission shall adopt the rules required by Sections
11 531.1521(a) and (e) and 531.166(b), Government Code, as added by
12 this Act; and

13 (2) the Department of Aging and Disability Services
14 shall:

15 (A) develop the information required by Section
16 531.1521(c), Government Code, as added by this Act; and

17 (B) develop and implement the process for
18 conducting a search for a child's parent or guardian required by
19 Section 531.165, Government Code, as added by this Act.

20 SECTION 3. Section 531.1521, Government Code, as added by
21 this Act, applies only to a child for whom the Department of Aging
22 and Disability Services or a local mental retardation authority is
23 notified of a request for placement in an institution on or after
24 September 1, 2006. A child with respect to whom the department or a
25 local mental retardation authority is notified of a request for
26 placement in an institution before September 1, 2006, is governed
27 by the law in effect on the date the notification was received, and

1 the former law is continued in effect for that purpose.

2 SECTION 4. (a) Sections 531.1532, 531.1591, and
3 531.164-531.166, Government Code, as added by this Act, apply only
4 with respect to a child who is admitted to an institution on or
5 after September 1, 2006.

6 (b) Notwithstanding Subsection (a), an institution in which
7 a child resides shall, as part of the annual service plan meeting
8 regarding the child, encourage the child's parent or guardian to
9 provide the information required on an admission form under Section
10 531.1532(1), Government Code, as added by this Act, and a signed
11 acknowledgment of responsibility under Section 531.1532(2),
12 Government Code, as added by this Act. Notwithstanding Subsection
13 (a) of this section, if the parent or guardian of a child for whom
14 the Department of Aging and Disability Services is required to
15 develop a permanency plan provides the information and
16 acknowledgment of responsibility as a result of the annual service
17 plan meeting as provided by this subsection, Sections
18 531.164-531.166, Government Code, as added by this Act, apply with
19 respect to the child, regardless of the date on which the child was
20 admitted to an institution.

21 SECTION 5. This Act takes effect September 1, 2005.