

By: Rodriguez

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 531.164-531.166 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 receives 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 available to the child. The system must be designed to ensure that the department provides the information through:

(1) a local mental retardation authority; or

(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.

(b) Information required to be provided under Subsection (a) may not be provided by the institution in which the child's

1 parent or guardian is considering placing the child.

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

6 (1) options for community-based services;

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

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

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

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

23 (e) The requirements of this section do not apply to a
24 request for the placement of a child in an institution if the child
25 is involved in an emergency situation, as defined by rules adopted
26 by the executive commissioner.

27 Sec. 531.1532. REQUIREMENTS ON ADMISSIONS OF CHILDREN TO

1 CERTAIN INSTITUTIONS. On the admission of a child to an institution
2 described by Section 531.151(3)(A), (B), or (D), the Department of
3 Aging and Disability Services shall require the child's parent or
4 guardian to submit:

5 (1) an admission form that includes:

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

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

8 (ii) social security number;

9 (iii) driver's license number and state of
10 issuance or personal identification card number issued by the
11 Department of Public Safety; and

12 (iv) place of employment and the employer's
13 address and telephone number;

14 (B) the name and address of a close relative of
15 the child and a statement indicating the relation between the
16 relative and the child; and

17 (C) the name, address, and telephone number of a
18 person whom the department or institution may contact in an
19 emergency, a statement indicating the relation between that person
20 and the child, and at the parent's or guardian's option, that
21 person's:

22 (i) driver's license number and state of
23 issuance or personal identification card number issued by the
24 Department of Public Safety; and

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

27 (2) a signed acknowledgment of responsibility stating

1 that the parent or guardian agrees to:

2 (A) notify the institution in which the child is
3 placed of any changes to the information submitted under
4 Subdivision (1)(A); and

5 (B) make every effort to participate in the
6 permanency planning process for the child.

7 Sec. 531.1591. ANNUAL REAUTHORIZATION OF PLANS OF CARE FOR
8 CERTAIN CHILDREN. (a) The executive commissioner shall adopt
9 rules under which the Department of Aging and Disability Services
10 requires a nursing facility in which a child resides to obtain from
11 the child's parent or guardian a reauthorization of the child's plan
12 of care that is developed by the facility.

13 (b) The rules adopted under this section must require that
14 the reauthorization be obtained annually in writing.

15 Sec. 531.164. DUTIES OF CERTAIN INSTITUTIONS. (a) This
16 section applies only to an institution described by Section
17 531.151(3)(A), (B), or (D).

18 (b) An institution must make reasonable accommodations to
19 promote the participation of the parent or guardian of a child
20 residing in the institution in all planning and decision-making
21 regarding the child's care, including participation in:

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

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

26 (3) decision-making regarding the child's medical
27 care;

1 (4) routine interdisciplinary team meetings; and
2 (5) decision-making and other activities involving
3 the child's health, safety, and quality of life.

4 (c) Reasonable accommodations that an institution must make
5 under this section include:

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

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

11 (3) if a parent or guardian has a disability,
12 providing reasonable accommodations in accordance with the
13 Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.),
14 including providing an accessible meeting location or a sign
15 interpreter, as applicable; and

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

17 (d) Except as otherwise provided by Subsection (e):

18 (1) an ICF-MR facility must:

19 (A) notify the parent or guardian of a child who
20 resides in the facility in writing of a periodic permanency
21 planning meeting or annual service plan review and reauthorization
22 meeting not later than the 21st day before the date the meeting is
23 scheduled to be held; and

24 (B) request a response from the parent or
25 guardian; and

26 (2) a nursing facility must:

27 (A) notify the parent or guardian of a child who

1 resides in the facility in writing of an annual service plan review
2 and reauthorization meeting not later than the 21st day before the
3 date the meeting is scheduled to be held; and

4 (B) request a response from the parent or
5 guardian.

6 (e) If a permanency planning meeting or service plan review
7 and reauthorization meeting is scheduled in response to an
8 emergency situation, an ICF-MR facility or nursing facility in
9 which the child who is the subject of the meeting resides must:

10 (1) notify the child's parent or guardian of the
11 meeting as soon as possible; and

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

13 (f) If a child's parent or guardian does not respond to a
14 notice under Subsection (d) or (e), the ICF-MR facility or nursing
15 facility, as applicable, must attempt to locate the parent or
16 guardian by contacting another person whose information was
17 provided by the parent or guardian under Section 531.1532(1)(B) or
18 (C).

19 (g) Not later than the 30th day after the date an ICF-MR
20 facility or nursing facility determines that it is unable to locate
21 a child's parent or guardian for participation in activities listed
22 under Subsection (b), the ICF-MR facility or nursing facility must
23 notify the Department of Aging and Disability Services of that
24 determination and request that the department initiate a reasonable
25 search for the child's parent or guardian.

26 Sec. 531.165. SEARCH FOR PARENT OR GUARDIAN OF A CHILD. (a)
27 The Department of Aging and Disability Services shall develop and

1 implement a process by which the department, on receipt of
2 notification under Section 531.164(g) that a child's parent or
3 guardian cannot be located, conducts a reasonable search for the
4 parent or guardian. If, on the first anniversary of the date the
5 ICF-MR facility or nursing facility in which the child resides made
6 its initial attempt to contact the parent or guardian, the
7 department has been unsuccessful in locating the parent or
8 guardian, the department shall refer the case to:

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

12 (2) the adult protective services division of the
13 Department of Family and Protective Services if the child is 18
14 years of age or older.

15 (b) On receipt of a referral under Subsection (a)(1), the
16 child protective services division of the Department of Family and
17 Protective Services shall exercise intense due diligence in
18 attempting to locate the child's parent or guardian. If the
19 division is unable to locate the child's parent or guardian, the
20 department shall file a suit affecting the parent-child
21 relationship requesting an order appointing the department as the
22 child's temporary managing conservator.

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

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

5 Sec. 531.166. TRANSFER OF CHILD BETWEEN INSTITUTIONS OR
6 PROGRAMS. (a) This section applies only to an institution
7 described by Section 531.151(3)(A), (B), or (D) in which a child
8 resides.

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

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

17 (1) the executive commissioner of the Health and Human
18 Services Commission shall adopt the rules required by Sections
19 531.1521(a) and (e) and 531.166(b), Government Code, as added by
20 this Act; and

21 (2) the Department of Aging and Disability Services
22 shall:

23 (A) develop the information required by Section
24 531.1521(c), Government Code, as added by this Act; and

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

1 SECTION 3. Section 531.1521, Government Code, as added by
2 this Act, applies only to a child for whom the Department of Aging
3 and Disability Services receives a request for placement in an
4 institution on or after September 1, 2006. A child for whom the
5 department receives a request for placement in an institution
6 before September 1, 2006, is governed by the law in effect on the
7 date the request was received, and the former law is continued in
8 effect for that purpose.

9 SECTION 4. (a) Sections 531.1532, 531.1591, and
10 531.164-531.166, Government Code, as added by this Act, apply only
11 with respect to a child who is admitted to an institution on or
12 after September 1, 2006.

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

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