

## **BILL ANALYSIS**

C.S.S.B. 805  
By: Uresti  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current Licensing Rules defined in the Texas Administrative Code children in the care of the Department of Family and Protective Services (department) are entitled to specific rights protecting them from abuse and discrimination, while at the same time guaranteeing them the right to appropriate treatment services and educational opportunities. Given these rights are separately defined in the Texas Administrative Code, Texas Family Code, Texas Human Resources Code and Child-Care Licensing Minimum Standards, as well as federal law, foster children rarely have the opportunity to examine and fully comprehend these rights. This leaves foster children unaware of their actual rights and unable to advocate for themselves appropriately when their rights have been infringed upon.

CSSB 805 establishes a Foster Children's Bill of Rights expanding upon the existing rights in statute and mandating this Bill of Rights be put on a document, translated into language that children can understand, and clearly explained to all children under the care of department. After this Bill of Rights has been explained to the child the document will be made available and accessible to the child for future reference. This provides the child with the ability to advocate for their rights in the future.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission and the Department of Family and Protective Services (department) in SECTION 1 of this bill.

### **ANALYSIS**

The bill provides that "agency foster group home," "agency foster home," "facility," "foster group home," and "foster home" have the meanings assigned by section 42.002, Human Resources Code and defines "Foster care" and "Foster children's bill of rights".

The bill sets forth the policy of the state, to the extent provided by state and federal law or policy, that each child in foster care has the right:

- (1) to live in a safe, healthy, and comfortable home where the child is treated with respect;
- (2) to be free from physical, sexual, emotional, and other abuse, including corporal punishment and any form of discipline that humiliates or demeans the child;
- (3) to be free from discrimination or harassment on the basis of gender, race, ethnicity, religion, national origin, disability, sexual orientation, or HIV status;
- (4) to receive adequate and healthy food;
- (5) to receive and keep adequate clothing suitable to the child's age and size and comparable to the clothing of other children in the community;
- (6) to receive appropriate medical, dental, vision, and mental health services;
- (7) subject to Subdivisions (8) and (9), to not be physically restrained for longer than one minute unless other less restrictive behavioral interventions have been unsuccessful and physical restraint is necessary to:
  - (A) prevent substantial physical harm or imminent, probable death to the child or imminent physical harm to another person; or

- (B) administer medication or provide medical treatment prescribed by a physician;
- (8) to not be physically restrained for any period as punishment, retribution, retaliation, or discipline, to obtain compliance from the child, for the convenience of the foster parent or other foster care provider, or as a substitute for effective treatment or rehabilitation;
- (9) to not be locked or otherwise confined in any room, building, or facility or placed in an area where the child is physically prevented from leaving, unless the confinement or restriction is based on the written orders of a psychiatrist, psychologist, or physician or is used in an emergency in accordance with the department's minimum standards for emergency behavior interventions;
- (10) to be placed in foster care with the child's siblings unless that placement is not in the best interests of the child or the child's siblings;
- (11) if a sibling of the child is not placed in foster care with the child, to be informed in writing of the name, address, and telephone number of the home or facility in which the sibling is placed, unless prohibited by court order or the child's caseworker or a Department of Family and Protective Services (department) supervisor determines that it is not in the child's best interests and the caseworker or supervisor, as applicable, includes the reason for that determination in the child's case records;
- (12) to have a private storage space in the home or facility in which the child resides to store the child's personal belongings;
- (13) to not be subjected to unreasonable searches of the child's personal belongings;
- (14) to contact caseworkers, attorneys ad litem, guardians ad litem, and court-appointed special advocates;
- (15) to communicate with caseworkers, judges, attorneys ad litem, guardians ad litem, court-appointed special advocates, foster parents, and other providers in the child's primary language, including in sign language;
- (16) to regularly visit and regularly contact siblings and to regularly contact other family members, unless prohibited by court order or the child's caseworker or a department supervisor determines that it is not in the child's best interests and the caseworker or supervisor, as applicable, includes the reason for that determination in the child's case records;
- (17) to never be denied contact or visitation with siblings or other family members as a form of discipline;
- (18) to attend religious services and activities of the child's choice;
- (19) to interact with persons outside of the foster care system, including teachers, church members, mentors, and friends;
- (20) to make and receive confidential telephone calls and to send and receive unopened mail, unless prohibited by court order or the child's caseworker or a department supervisor determines that it is not in the child's best interests and the caseworker or supervisor, as applicable, includes the reason for that determination in the child's case records;
- (21) to receive an age-appropriate money allowance, in an amount determined by the foster parent or other foster care provider, for the purpose of developing money management skills, using money from the foster care payments made by the department to the foster parent or other foster care provider for the care of the child;
- (22) to maintain a personal bank account and manage personal income consistent with the child's age and developmental level, unless prohibited by the child's service plan;

- (23) to expect that the child's records will be kept confidential in accordance with existing state and federal law, including the child's medical, mental health, child protective services, and educational records;
- (24) to receive care and treatment in the least restrictive environment that is most like a family setting, consistent with the best interests and needs of the child;
- (25) to not be unnecessarily or excessively medicated;
- (26) to not be admitted as a voluntary inpatient to a mental health facility unless the child consents as required by Section 572.001(c), Health and Safety Code;
- (27) if the child is at least 14 years of age, to request a medical review of the child's medical care, including a review of the medications prescribed to the child, by a medical review team, and to receive a copy of the results of any medical review;
- (28) to be informed before the child is 16 years of age that the child, at 16 years of age, may request a court hearing to determine if the child has the capacity to consent to medical care under Section 266.010;
- (29) if the child is at least 16 years of age, to consent to all or some medical care, as authorized by the court under Section 266.010;
- (30) if the child is at least 12 years of age, to participate in the development of the child's service plan and permanency plan;
- (31) if the child is at least 12 years of age, to review and receive information regarding the child's service plan and permanency plan, including any changes made to the plans;
- (32) to receive information about the child's foster parent or other foster care provider consistent with the child's age and developmental level;
- (33) to be appointed an attorney ad litem who is competent and provides zealous legal representation of the child's interests, and to meet, in person, with the child's attorney ad litem before each hearing involving the child;
- (34) to request the appointment of an attorney or guardian ad litem to represent the child, if the child is not already represented by an attorney or guardian ad litem;
- (35) to attend a court hearing that affects the conservatorship or placement of the child, including a status hearing, a permanency review hearing, or a placement review hearing;
- (36) if the child is at least 14 years of age, to remain in the courtroom during a court hearing that affects the conservatorship or placement of the child, including a status hearing, a permanency review hearing, or a placement review hearing;
- (37) regardless of the child's age, to speak privately to the judge at a court hearing that affects the conservatorship or placement of the child, including a status hearing, a permanency review hearing, or a placement review hearing;
- (38) if the child has a disability, to be informed, in writing, of the name, existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the applicable federal developmental disability laws, as defined by Section 112.001, Human Resources Code, for the purpose of advocating for and protecting the rights of persons with that disability;
- (39) to attend school and participate in sports, clubs, and other school-related extracurricular activities, consistent with the child's age and developmental level;
- (40) to participate in community activities, including recreational and social activities, consistent with the child's age and developmental level;
- (41) to the extent possible, to have minimal disruption in the child's education, including the right to attend the same school if placed with an alternative foster care provider, unless otherwise ordered by the court;
- (42) if the child participates in a special education program, to meet and consult with the surrogate parent assigned to the child in accordance with federal law, regarding the child's individualized education program prior to each admission, review, and dismissal committee meeting held regarding the child;

- (43) to participate in an organization that advocates for or on behalf of foster youth;
- (44) to work and develop job skills consistent with the child's age in accordance with state and federal law;
- (45) if the child is at least 16 years of age, to have access to information regarding postsecondary educational and vocational options available to the child, including information regarding financial aid available for postsecondary education and the course work or other requirements required to complete vocational training and postsecondary educational programs;
- (46) to attend classes and receive other services provided under the Preparation for Adult Living Program established under Section 264.121;
- (47) on, or as soon as possible after, the date of the child's 18th birthday or the date the child's disabilities of minority are removed, to be provided with the child's health and education passport information, social security card, state-issued personal identification card, and a certified copy of the child's birth certificate;
- (48) to be informed in writing of how the child may obtain copies of the child's case records;
- (49) to be informed in writing of the name, address, and telephone number of the person at or the division or office of the department that handles complaints regarding a violation of the child's rights; and
- (50) to make a confidential complaint with the appropriate person at or the division or office of the department, or to speak confidentially with an appropriate person at the department, regarding a violation of the child's rights without punishment or threat of punishment for making the complaint.

The bill provides that this section may not be construed to require a foster parent or other foster care provider to take any action that would impair the health or safety of a child in foster care. The bill provides that any action taken that is inconsistent with the foster children's bill of rights be included in the permanency progress report or placement review report filed with a court.

The bill requires the department to provide a written copy of the foster children's bill of rights to each child placed in foster care in the child's primary language, if possible, and is required to inform the child of the rights provided by the foster children's bill of rights orally in the child's primary language, if possible, and in simple, nontechnical terms; or for a child who has a disability, through any means that can reasonably be expected to result in successful communication with the child.

The bill authorizes a child to, at the child's option, sign a document acknowledging the child's understanding of the foster children's bill of rights after the department provides a written copy of the foster children's bill of rights to the child and informs the child of the rights provided by that bill of rights. The bill provides that, if a child signs a document acknowledging the child's understanding of the foster children's bill of rights, the document be placed in the child's case file.

The bill requires an agency foster group home, agency foster home, foster group home, foster home, or other facility in which a child is placed in foster care to provide a copy of the foster children's bill of rights to a child on the child's request. The bill provides that the foster children's bill of rights be printed in English and in a second language.

The department is required to promote the participation of foster children and former foster children in educating other foster children about the foster children's bill of rights.

The bill requires the executive commissioner of the Health and Human Services Commission and the department as appropriate, to ensure that the rules and policies governing foster care are consistent with the state policy outlined in the foster children's bill of rights. The bill authorizes the executive commissioner or the department, as appropriate, to adopt rules or policies that provide greater protections for the rights of children in foster care.

#### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute adds language establishing that "Agency foster group home," "agency group home," "facility," "foster group home," and "foster home" have the meanings assigned by Section 42.002, Human Resources Code.

The substitute adds language defining "foster care."

The substitute replaces all references to "substitute care" in the original bill to "foster care."

The substitute adds language establishing that, to the extent provided by state or federal law or policy, it is the policy of this state that each child in foster care has certain rights.

The substitute adds language specifying that a child in foster care has the right to not be locked or otherwise confined unless the confinement or restriction is based on the written orders of psychiatrist, psychologist, or physician or is used in an emergency in accordance with the department's minimum standards for emergency behavior interventions.

The substitute authorizes a child placed in foster care to, at the child's option, sign a document acknowledging the child's understanding of the foster children's bill of rights after the department provides a written copy of it to the child and informs the child of the rights provided by that bill of rights. The substitute provides that if a child signs a document acknowledging the child's understanding of the foster children's bill of rights, the document is to be placed in the child's case file.

The substitute modifies the original by replacing "a home or facility" with "an agency foster group home, agency foster home, foster group home, foster home or other facility" in requiring them to provide a copy of the foster children's bill of rights to a child on the child's request.

The substitute adds new language requiring the executive commissioner of the Health and Human Services Commission and the department, as appropriate, to ensure that the rules and policies governing foster care are consistent with the state policy outlined in the foster children's bill of rights. The substitute authorizes the executive commissioner or the department, as appropriate, to adopt rules or policies that provide greater protections for the rights of children in foster care.