

BILL ANALYSIS

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S.B. 1376
By: Uresti
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Family Code, as written, does not address situations in which children are involved with two governmental systems, specifically the Department of Family and Protective Services (DFPS) and the Texas Youth Commission (TYC). In 2007, approximately 200 youth who were in the legal custody of DFPS due to allegations of child abuse or neglect had been committed to TYC facilities due to delinquent behavior on the part of the youth.

Despite the youth being "dually managed" by two state agencies, there is a lack of coordination between Child Protective Services and TYC in terms of the continuation of services for foster children who have been committed to a facility. There is little overlap in communication, services, or long-term plan coordination, resulting in the needs of these youth going unmet by either system.

As proposed, S.B. 1376 requires DFPS, an authorized agency, or a licensed child-placing agency that has been appointed managing conservator of a youth committed to TYC to provide consent for medical, dental, psychological, and surgical treatment. This bill authorizes juvenile justice courts, courts with continuing jurisdiction, and DFPS to communicate with each other prior to the disposition and authorizes the court to appoint attorneys or guardians ad litem for youth in foster care when DFPS does not continue the appointment for the youth's attorney or guardian ad litem. The bill requires the court to hold hearings for the review of placement for foster youth committed to or released under the supervision of TYC and permits the foster youth committed to TYC to attend the permanency hearing or placement review hearing in person, by telephone, or by videoconference. S.B. 1376 requires the appropriate child protective services caseworker to include in the permanency progress report and the placement review report, his or her evaluation of whether the treatment, rehabilitation, and education needs of a youth committed to or released under this supervision of TYC are being met. The bill requires the court at the permanency hearing to make those determinations as well. S.B. 1376 prohibits courts from dismissing suits affecting the parent-child relationship for foster youth while they are committed to or released under the supervision of TYC, unless the youth ages out of foster care or is placed in a permanent home. The bill adds foster youth who are committed to TYC to the list of individuals authorized to participate in teleconferencing and videoconferencing technology in court proceedings and requires TYC to ensure that DFPS, an authorized agency, or a licensed child-placing agency that is appointed managing conservator of youth committed to TYC is given the same rights as the youth's parents under the Parent's Bill of Rights. The bill requires the appropriate TYC caseworker to submit reports to the court, DFPS, attorneys and guardians ad litem, and any appointed volunteer advocates concerning foster youth committed to TYC. The bill also requires TYC and the executive commissioner of HHSC to adopt rules to ensure that foster youth receive appropriate services while they are committed to or released under the supervision of TYC.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Youth Commission and the executive commissioner of the Health and Human Services Commission, jointly, in SECTION 15 (Section 61.0767, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.001(b), Family Code, as follows:

(b) Authorizes the Texas Youth Commission (TYC), except as otherwise provided by this subsection, to consent to the medical, dental, psychological, and surgical treatment of a child committed to TYC, rather than it, under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary. Provides that consent for medical, dental, psychological, and surgical treatment of a child for whom the Department of Family and Protective Services (DFPS), an authorized agency, or a licensed child-placing agency has been appointed managing conservator and who is committed to TYC is governed by Sections 266.004 (Consent for Medical Care), 266.009 (Provision of Medical Care in Emergency), and 266.010 (Consent to Medical Care by Foster Child at Least 16 Years of Age).

SECTION 2. Amends Section 54.04, Family Code, by adding Subsection (y), as follows:

(y) Authorizes a juvenile court conducting a hearing under this section involving a child for whom DFPS has been appointed managing conservator to communicate with the court having continuing jurisdiction over the child before the disposition hearing. Authorizes the juvenile court to allow a party to the suit affecting the parent-child relationship to participate in the communication under this subsection.

SECTION 3. Amends Part 1, Subchapter B, Chapter 107, Family Code, by adding Section 107.0161, as follows:

Sec. 107.0161. AD LITEM APPOINTMENTS FOR CHILD COMMITTED TO TEXAS YOUTH COMMISSION. Authorizes the court, if an order appointed DFPS as managing conservator of a child does not continue the appointment of the child's guardian ad litem or attorney ad litem and the child is committed to TYC or released under supervision by TYC, to appoint a guardian ad litem or attorney ad litem for the child.

SECTION 4. Amends Section 263.001(a)(4), Family Code, to redefine "substitute care."

SECTION 5. Amends Section 263.002, Family Code, as follows:

Sec. 263.002. REVIEW OF PLACEMENTS BY COURT. Requires the court, in a suit affecting the parent-child relationship in which DFPS or an authorized agency has been appointed by the court or designated in an affidavit of relinquishment of parental rights as the temporary or permanent managing conservator of a child, to hold a hearing to review the conservatorship appointment and substitute care, and for a child committed to TYC, the child's placement in TYC or release under supervision by TYC. Makes nonsubstantive changes.

SECTION 6. Amends Section 263.302, Family Code, as follows:

Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. Authorizes a child committed to TYC to attend a permanency hearing in person, by telephone, or by videoconference.

SECTION 7. Amends Section 263.303(b), Family Code, to require that the permanency progress report recommend that the suit continue, and with respect to a child committed to TYC or released under supervision by TYC, evaluate whether the child's needs for treatment, rehabilitation, and education are being met and recommend other plans or services to meet the child's needs.

SECTION 8. Amends Section 263.306(a), Family Code, to require the court, at each permanency hearing, if the child is committed to TYC or released under supervision by TYC, to determine whether the child's needs for treatment, rehabilitation, and education are being met. Makes nonsubstantive changes.

SECTION 9. Amends Section 263.501, Family Code, by amending Subsection (f) and adding Subsection (g), as follows:

(f) Authorizes a child committed to TYC to attend a placement hearing in person, by telephone, or by videoconference.

(g) Prohibits a court required to conduct placement review hearings for a child for whom DFPS has been appointed permanent managing conservator from dismissing a suit affecting the parent-child relationship filed by DFPS regarding the child while the child is committed to TYC or released under the supervision of TYC.

SECTION 10. Amends Section 263.502(c), Family Code, to require that the placement review report with respect to a child committed to TYC or released under supervision by TYC, evaluate whether the child's needs for treatment, rehabilitation, and education are being met.

SECTION 11. Amends Section 263.503, Family Code, as follows:

Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE. Requires the court, at each placement review hearing, to determine whether if the child is committed to TYC or released under supervision by TYC, the child's needs for treatment, rehabilitation, and education are being met.

SECTION 12. Amends Section 264.0091, Family Code, as follows:

Sec. 264.0091. USE OF TELECONFERENCING AND VIDEOCONFERENCING TECHNOLOGY. Requires DFPS, subject to the availability of funds, in cooperation with district and county courts, to expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts, children, and other individuals in court proceedings, including children for whom DFPS, an authorized agency, or a licensed child-placing agency has been appointed managing conservator and who are committed to TYC.

SECTION 13. Amends Section 61.0731, Human Resources Code, by adding Subsection (d), as follows:

(d) Requires TYC, notwithstanding Subsection (a), if DFPS, an authorized agency, or a licensed child-placing agency has been appointed managing conservator for a child, to disclose records and other information concerning the child to DFPS or the agency.

SECTION 14. Amends Section 61.0763, Human Resources Code, as added by Chapter 263 (S.B. 103), Acts of the 80th Legislature, Regular Session, 2007, by adding Subsection (e), as follows:

(e) Requires TYC to ensure that if DFPS, an authorized agency, or a licensed child-placing agency has been appointed managing conservator of a child, DFPS or the agency is given the same rights as the child's parent under the parent's bill of rights developed under this section.

SECTION 15. Amends Subchapter E, Chapter 61, Human Resources Code, by adding Sections 61.0766 and 61.0767, as follows:

Sec. 61.0766. REPORT CONCERNING FOSTER CHILDREN COMMITTED TO COMMISSION. (a) Requires a TYC caseworker, not later than the 10th day before the date of a permanency hearing under Subchapter D (Permanency Hearings), Chapter 263 (Review of Placement of Children Under Care of Department of Protective and Regulatory Services), Family Code, or a placement review hearing under Subchapter F (Placement Review Hearings), Chapter 263, Family Code, regarding a child for whom DFPS, an authorized agency, or a licensed child-placing agency has been appointed managing conservator, to submit a written report regarding the child's commitment to TYC to the court, DFPS or the authorized agency or licensed child-placing agency that has been appointed managing conservator of the child, any attorney ad litem or guardian ad litem appointed for the child, and any volunteer advocate appointed for the child.

(b) Requires that the report required by Subsection (a) include the results of any assessments of the child during the child's commitment to TYC, including assessments of the child's emotional, mental, educational, psychological,

psychiatric, medical, or physical needs; information regarding the child's placement in particular programs administered by TYC; and a description of the child's progress in programs administered by TYC.

Sec. 61.0767. RULES REGARDING SERVICES FOR FOSTER CHILDREN. (a) Requires TYC and the executive commissioner of the Health and Human Services Commission (HHSC) to jointly adopt rules to ensure that a child for whom DFPS, an authorized agency, or a licensed child-placing agency has been appointed managing conservator receives appropriate services while the child is committed to TYC or released under supervision by TYC.

(b) Requires that the rules adopted under this section require TYC and DFPS to cooperate in providing appropriate services to a child for whom DFPS, an authorized agency, or a licensed child-placing agency has been appointed managing conservator while the child is committed to TYC or released under supervision by TYC, including medical care, as defined by Section 266.001 (Definitions), Family Code; mental health treatment and counseling; education, including special education; case management; drug and alcohol abuse assessment or treatment; sex offender treatment; and trauma informed care.

(c) Requires that the rules adopted under this section require:

(1) DFPS to provide TYC with access to a child's health and education passports, and require a child's caseworker to visit the child in person at least once each month while the child is committed to TYC;

(2) TYC to provide DFPS with information required for a child's health or education passport; permit communication, including in person, by telephone, and by mail, between a child committed to TYC and DFPS or the authorized agency or licensed child-placing agency that has been appointed managing conservator of the child; and the attorney ad litem, the guardian ad litem, and the volunteer advocate for the child; and provide DFPS, the authorized agency of licensed child-placing agency that has been appointed managing conservator of the child, and any attorney ad litem or guardian ad litem for the child with the timely notice of certain events relating to the child; and

(3) DFPS and TYC to participate in transition planning for the child through release from detention, release under supervision, and discharge.

SECTION 16. (a) Requires the executive commissioner of HHSC and TYC, not later than December 1, 2009, to adopt the rules required by Section 61.0767, Human Resources Code, as added by this Act.

(b) Provides that the changes in law made by this Act apply to an individual for whom DFPS or another agency has been appointed managing conservator and who is in the custody of TYC or released under supervision by TYC on or after the effective date of this Act, regardless of the date on which the person was committed to TYC or released under supervision by TYC.

SECTION 17. Effective date: upon passage or September 1, 2009.