

By: Dutton

H.B. No. 948

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 261.103, Family Code, is amended by adding Subsection (d) to read as follows:

(d) The department or other entity receiving a report of abuse or neglect shall maintain an audio recording of each report made over the telephone.

SECTION 2. Section 261.302, Family Code, is amended by amending Subsections (a) and (f) and adding Subsections (e-1), (e-2), and (e-3) 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, any other child in the home, or the child's parents, which may include a medical, psychological, or psychiatric examination as authorized by Subsection (e-1).

(e-1) Except as provided by Subsection (e-2), an investigation that includes an examination of the subject child or any other child in the household may not include a medical, psychological, or psychiatric examination of the child unless:

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

3 (2) the department obtains a court order for the
4 medical, psychological, or psychiatric examination.

5 (e-2) If during the investigation a department investigator
6 believes that a child needs emergency medical attention before a
7 representative of a law enforcement agency is able to arrive, the
8 investigator may obtain medical assistance for the child from
9 emergency medical services personnel, as defined by Section
10 773.003, Health and Safety Code.

11 (e-3) This section does not limit the authority of a law
12 enforcement agency to perform its duties under any other law.

13 (f) A person commits an offense if the person is notified of
14 the time of the transport of a child by the department and the
15 location from which the transport is initiated and the person is
16 present at the location when the transport is initiated and
17 attempts to interfere with the department's investigation. An
18 offense under this subsection is a Class B misdemeanor. It is an
19 exception to the application of this subsection that the department
20 requested the person to be present at the site of the transport.
21 This subsection only applies when the department has taken custody
22 of a child under Section 262.104, an ongoing court-ordered
23 investigation is being conducted, or the child's parent,
24 conservator, or legal guardian has consented to the transport.

25 SECTION 3. Section 261.3021, Family Code, is amended to
26 read as follows:

27 Sec. 261.3021. CASEWORK DOCUMENTATION AND MANAGEMENT. (a)

1 Subject to the appropriation of money for these purposes, the
2 department shall:

3 (1) identify critical investigation actions that
4 impact child safety and require department caseworkers to document
5 those actions in a child's case file not later than the day after
6 the action occurs;

7 (2) identify and develop a comprehensive set of
8 casework quality indicators that must be reported in real time to
9 support timely management oversight;

10 (3) provide department supervisors with access to
11 casework quality indicators and train department supervisors on the
12 use of that information in the daily supervision of caseworkers;

13 (4) develop a case tracking system that notifies
14 department supervisors and management when a case is not
15 progressing in a timely manner;

16 (5) use current data reporting systems to provide
17 department supervisors and management with easier access to
18 information; and

19 (6) train department supervisors and management on the
20 use of data to monitor cases and make decisions.

21 (b) The department shall record and maintain all interviews
22 and documents pertaining to an investigation, including original
23 notes.

24 SECTION 4. Section 261.307(a), Family Code, is amended to
25 read as follows:

26 (a) As soon as possible after initiating an investigation of
27 a parent or other person having legal custody of a child, the

1 department shall provide to the person:

2 (1) a summary that:

3 (A) is brief and easily understood;

4 (B) is written in a language that the person
5 understands, or if the person is illiterate, is read to the person
6 in a language that the person understands; and

7 (C) contains the following information:

8 (i) the department's procedures for
9 conducting an investigation of alleged child abuse or neglect,
10 including:

11 (a) a description of the
12 circumstances under which the department would request to remove
13 the child from the home through the judicial system; and

14 (b) an explanation that the law
15 requires the department to refer all reports of alleged child abuse
16 or neglect to a law enforcement agency for a separate determination
17 of whether a criminal violation occurred;

18 (ii) the person's right to file a complaint
19 with the department or to request a review of the findings made by
20 the department in the investigation;

21 (iii) the person's right to review all
22 records of the investigation unless the review would jeopardize an
23 ongoing criminal investigation or the child's safety;

24 (iv) the person's right to seek legal
25 counsel;

26 (v) references to the statutory and
27 regulatory provisions governing child abuse and neglect and how the

1 person may obtain copies of those provisions; and

2 (vi) the process the person may use to
3 acquire access to the child if the child is removed from the home;

4 (2) if the department determines that removal of the
5 child may be warranted, a proposed child placement resources form
6 that:

7 (A) instructs the parent or other person having
8 legal custody of the child to:

9 (i) complete and return the form to the
10 department or agency; and

11 (ii) identify in the form three individuals
12 who reside in the state within 100 miles from the child's primary
13 residence who could serve as ~~be~~ relative caregivers or designated
14 caregivers, as those terms are defined by Section 264.751, before a
15 suit affecting the parent-child relationship is filed and until the
16 suit is dismissed; and

17 (B) informs the parent or other person of a
18 location that is available to the parent or other person to submit
19 the information in the form 24 hours a day either in person or by
20 facsimile machine or e-mail; and

21 (3) an informational manual required by Section
22 261.3071.

23 SECTION 5. Section 261.309, Family Code, is amended by
24 amending Subsection (d) and adding Subsections (b-1), (c-1), (c-2),
25 and (e-1) to read as follows:

26 (b-1) The immediate supervisor shall submit a written
27 report at the conclusion of the informal review under Subsection

1 (b). The report must summarize the person's case or complaint and
2 contain the supervisor's findings relating to the person's case or
3 complaint. The department shall make the written report available
4 to the person under investigation.

5 (c-1) At the administrative review under Subsection (c),
6 the person conducting the review for the department shall allow the
7 person challenging the findings to question the investigative
8 workers and immediate supervisors who developed the department's
9 findings. The department may postpone the administrative review for
10 not more than 30 days to ensure attendance of necessary
11 investigative workers and immediate supervisors.

12 (c-2) The department shall make an audio recording of the
13 administrative review and preserve the recording until the first
14 anniversary of the date the administrative review concludes. The
15 department shall make the audio recording available to any party
16 involved in the review not later than the 10th day after the date
17 the person requests access to the recording.

18 (d) Unless a civil or criminal court proceeding or an
19 ongoing criminal investigation relating to the alleged abuse or
20 neglect investigated by the department is pending, the department
21 employee shall conduct the review prescribed by Subsection (c) as
22 soon as possible but not later than the 45th day after the date the
23 department receives the request. If a civil court proceeding
24 initiated by the department, a [or] criminal court proceeding, or
25 an ongoing criminal investigation is pending, the department may
26 postpone the review until the court proceeding is completed. The
27 department shall conduct the review not later than the 45th day

1 after the date the court proceeding or investigation is completed.

2 (e-1) A person under investigation for allegedly abusing or
3 neglecting the person's child is not subject to, and cannot be
4 required to submit to, the jurisdiction of the State Office of
5 Administrative Hearings in any proceeding in connection to the
6 alleged abuse or neglect.

7 SECTION 6. Section 261.310(d), Family Code, is amended to
8 read as follows:

9 (d) The standards shall:

10 (1) recommend that videotaped and audiotaped
11 interviews be uninterrupted;

12 (2) recommend a maximum number of interviews with and
13 examinations of a suspected victim;

14 (3) provide procedures to preserve evidence,
15 including the original audio recordings of the intake telephone
16 calls, original notes, videotapes, and other audiotapes, for one
17 year from the later of the date the evidence is created or the date
18 of a final judgment in a case for which the evidence is created; and

19 (4) provide that an investigator of suspected child
20 abuse or neglect make a reasonable effort to locate and inform each
21 parent of a child of any report of abuse or neglect relating to the
22 child.

23 SECTION 7. Sections 262.112(a) and (b), Family Code, are
24 amended to read as follows:

25 (a) The Department of Family and Protective [~~and~~
26 ~~Regulatory~~] Services and the parent, conservator, or legal guardian
27 of a child are [~~is~~] entitled to an expedited hearing under this

1 chapter in any proceeding in which a hearing is required if the
2 department determines that a child should be removed from the
3 child's home because of an immediate danger to the physical health
4 or safety of the child.

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

10 SECTION 8. Section 262.114, Family Code, is amended to read
11 as follows:

12 Sec. 262.114. EVALUATION OF IDENTIFIED RELATIVES AND OTHER
13 DESIGNATED INDIVIDUALS; PLACEMENT. (a) If a governmental entity
14 determines, after completing an investigation, that a child should
15 be removed from the child's home and placed in the custody of the
16 Department of Family and Protective Services, the department shall,
17 on receiving the child placement resources form as provided under
18 Section 261.307, [~~Before a full adversary hearing under Subchapter~~
19 ~~C, the Department of Family and Protective Services must]~~
20 immediately perform a background and criminal history check of:

21 (1) the relatives or other designated individuals
22 identified as a potential relative or designated caregiver, as
23 defined by Section 264.751; and

24 (2) each person over 18 years of age who resides in the
25 designated person's household [~~, on the proposed child placement~~
26 ~~resources form provided under Section 261.307].~~

27 (a-1) The department shall evaluate each person listed on

1 the form by the standards outlined in Section 262.115 to determine
2 the relative or other designated individual who would be the most
3 appropriate substitute caregiver for the child [~~and must complete a~~
4 ~~home study of the most appropriate substitute caregiver, if any,~~
5 ~~before the full adversary hearing~~].

6 (a-2) The right of the parent, conservator, or legal
7 guardian of the child to designate the person with whom the child is
8 placed continues until the date the suit affecting the parent-child
9 relationship is dismissed. The parent, conservator, or legal
10 guardian may change the person designated on the child placement
11 resources form as a relative or designated caregiver. The
12 department shall place the child with the person subsequently
13 designated as a relative or designated caregiver, if the child is
14 removed from the care of a person who was previously designated.

15 (a-3) If the parent, conservator, or legal guardian fails to
16 designate [~~Until the department identifies~~] a relative or other
17 designated individual qualified to be a substitute caregiver, the
18 department must continue to explore substitute caregiver options.
19 The time frames in this subsection do not apply to a relative or
20 other designated individual located more than 100 miles from the
21 child's primary residence [~~in another state~~].

22 (b) [~~The department may place a child with a relative or~~
23 ~~other designated individual identified on the proposed child~~
24 ~~placement resources form if the department determines that the~~
25 ~~placement is in the best interest of the child.~~] The department may
26 place the child with the relative or designated individual before
27 conducting the background and criminal history check or home study

1 required under Subsection (a). The department shall provide a copy
2 of an informational manual required under Section 261.3071 to the
3 relative or other designated caregiver at the time of the child's
4 placement.

5 (c) The department shall provide the mother of a child who
6 is breast-feeding with scheduled visitation periods at appropriate
7 intervals to allow the mother to continue breast-feeding the child,
8 unless the court finds after a hearing that the mother is not fit
9 for these visitation periods.

10 (d) At each hearing conducted in a suit affecting the
11 parent-child relationship filed under this chapter, the court shall
12 inform the child's parent, conservator, or legal guardian orally
13 and in writing of that person's right to designate a relative or
14 designated caregiver with whom the child is placed.

15 SECTION 9. Subchapter B, Chapter 262, Family Code, is
16 amended by adding Section 262.115 to read as follows:

17 Sec. 262.115. LIMITATION ON PLACEMENT WITH DESIGNATED
18 PERSON. (a) Except as provided by Subsection (c), the department
19 may not place a child with a person designated by the child's
20 parent, conservator, or legal guardian under Section 262.114 if the
21 department determines that:

22 (1) the placement would expose the child to immediate
23 danger to the child's physical health or safety; or

24 (2) the designated person or another person in the
25 designated person's household:

26 (A) is listed in the department's statewide
27 central registry system with a finding that the department

1 confirmed, had reason to believe, or could not determine that the
2 person abused or neglected a child;

3 (B) is the subject of a report of child abuse or
4 neglect being investigated by the department;

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

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

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

15 (b) A law enforcement agency in this state, on request by
16 the department, shall assist in conducting a criminal background
17 check on a designated person or any other person in the designated
18 person's household.

19 (c) The department may place a child with a person described
20 by Subsection (a) if the department determines that placement of
21 the child with the designated person will not endanger the child.

22 (d) If the department determines that the designated person
23 under Section 262.114 is not an appropriate placement for the
24 child, the department shall immediately provide the parent,
25 conservator, or legal guardian with written notice stating the
26 specific facts leading to the department's objections to the
27 placement. The parent, conservator, or legal guardian may

1 challenge the department's placement decision by filing a motion
2 for a hearing before the court. The court shall render an order
3 regarding placement of the child after hearing testimony from the
4 parties. The court may approve the placement of the child with the
5 designated person and order any modification the court determines
6 necessary to address the department's written objections.

7 SECTION 10. Sections 263.103(a) and (d), Family Code, are
8 amended to read as follows:

9 (a) Before the service plan is signed, the child's parents
10 and the representative of the department or other agency shall
11 discuss each term and condition of the plan. The representative
12 shall inform the parents that the service plan is voluntary and can
13 only be made mandatory by the department if a suit affecting the
14 parent-child relationship has been filed and the department has
15 obtained court authorization.

16 (d) The plan takes effect when[+
17 [~~(1)~~] the child's parents and the appropriate
18 representative of the department or other authorized agency sign
19 the plan. If the child's parents refuse to sign the plan, a motion
20 may be filed by any party for a hearing at which the court shall
21 either accept the plan or modify the plan based on the testimony of
22 the parties[+, ~~or~~

23 [~~(2) the department or other authorized agency files~~
24 ~~the plan without the parents' signatures~~].

25 SECTION 11. Section 264.751(1), Family Code, is amended to
26 read as follows:

27 (1) "Designated caregiver" means an individual

1 qualified under Section 262.114 [~~who has a longstanding and~~
2 ~~significant relationship with a child for whom the department has~~
3 ~~been appointed managing conservator and~~] who:

4 (A) is appointed to provide substitute care for
5 the child, but is not licensed or certified to operate a foster
6 home, foster group home, agency foster home, or agency foster group
7 home under Chapter 42, Human Resources Code; or

8 (B) is subsequently appointed permanent managing
9 conservator of the child after providing the care described by
10 Paragraph (A).

11 SECTION 12. Section 264.753, Family Code, is amended to
12 read as follows:

13 Sec. 264.753. EXPEDITED PLACEMENT. Because there is a
14 rebuttable presumption that placing a child in the care of a person
15 designated by the child's parent, conservator, or legal guardian is
16 in the child's best interest, the [~~The~~] department or other
17 authorized entity shall expedite the completion of the background
18 and criminal history check according to Section 262.114 [~~, the home~~
19 ~~study,~~] and any other administrative procedure to ensure that the
20 child is placed with a qualified relative or caregiver as soon as
21 possible after the date the caregiver is identified.

22 SECTION 13. Section 264.754, Family Code, is amended to
23 read as follows:

24 Sec. 264.754. INVESTIGATION OF [~~PROPOSED~~] PLACEMENT OF
25 CHILD WITH DESIGNATED CAREGIVER. After [~~Before~~] placing a child
26 with a proposed relative or other designated caregiver under the
27 standards of Sections 262.114 and 262.115, the department may

1 ~~[must]~~ conduct a comprehensive ~~[an]~~ investigation, including a home
2 study, to determine whether the designated ~~[proposed]~~ placement
3 meets the minimum standards for the health and safety of the child.
4 There is a rebuttable presumption that a placement with a
5 designated caregiver is in the child's best interest.

6 SECTION 14. Section 261.302(c), Family Code, is repealed.

7 SECTION 15. The changes in law made by this Act apply only
8 to an investigation of a report of child abuse or neglect that is
9 made, or a suit affecting the parent-child relationship that is
10 commenced, on or after the effective date of this Act. A report
11 that is made or a suit that is commenced before the effective date
12 of this Act is governed by the law in effect on the date the report
13 was made or the suit was commenced, and the former law is continued
14 in effect for that purpose.

15 SECTION 16. This Act takes effect September 1, 2009.