

By: Naishtat, Madden

H.B. No. 1629

A BILL TO BE ENTITLED

AN ACT

relating to the care and protection of foster children committed to
or released under supervision by the Texas Youth Commission.

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

SECTION 1. Section 32.001(b), Family Code, is amended to
read as follows:

(b) Except as otherwise provided by this subsection, the
~~[The]~~ Texas Youth Commission may consent to the medical, dental,
psychological, and surgical treatment of a child committed to the
Texas Youth Commission ~~[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. Consent for medical, dental,
psychological, and surgical treatment of a child for whom the
Department of Family and Protective Services has been appointed
managing conservator and who is committed to the Texas Youth
Commission is governed by Sections 266.004, 266.009, and 266.010.

SECTION 2. Section 54.04, Family Code, is amended by adding
Subsection (y) to read as follows:

(y) A juvenile court conducting a hearing under this section
involving a child for whom the Department of Family and Protective
Services has been appointed managing conservator may communicate
with the court having continuing jurisdiction over the child before
the disposition hearing. The juvenile court may allow the parties
to the suit affecting the parent-child relationship in which the

1 Department of Family and Protective Services is a party to
2 participate in the communication under this subsection.

3 SECTION 3. Part 1, Subchapter B, Chapter 107, Family Code,
4 is amended by adding Section 107.0161 to read as follows:

5 Sec. 107.0161. AD LITEM APPOINTMENTS FOR CHILD COMMITTED TO
6 TEXAS YOUTH COMMISSION. If an order appointing the Department of
7 Family and Protective Services as managing conservator of a child
8 does not continue the appointment of the child's guardian ad litem
9 or attorney ad litem and the child is committed to the Texas Youth
10 Commission or released under supervision by the Texas Youth
11 Commission, the court may appoint a guardian ad litem or attorney ad
12 litem for the child.

13 SECTION 4. Section 263.001(a)(4), Family Code, is amended
14 to read as follows:

15 (4) "Substitute care" means the placement of a child
16 who is in the conservatorship of the department or an authorized
17 agency in care outside the child's home. The term includes foster
18 care, institutional care, adoption, [~~or~~] placement with a relative
19 of the child, or commitment to the Texas Youth Commission.

20 SECTION 5. Section 263.002, Family Code, is amended to read
21 as follows:

22 Sec. 263.002. REVIEW OF PLACEMENTS BY COURT. In a suit
23 affecting the parent-child relationship in which the department or
24 an authorized agency has been appointed by the court or designated
25 in an affidavit of relinquishment of parental rights as the
26 temporary or permanent managing conservator of a child, the court
27 shall hold a hearing to review:

1 (1) the conservatorship appointment and substitute
2 care; and

3 (2) for a child committed to the Texas Youth
4 Commission, the child's commitment in the Texas Youth Commission or
5 release under supervision by the Texas Youth Commission.

6 SECTION 6. Section 263.302, Family Code, is amended to read
7 as follows:

8 Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. The child
9 shall attend each permanency hearing unless the court specifically
10 excuses the child's attendance. A child committed to the Texas
11 Youth Commission may attend a permanency hearing in person, by
12 telephone, or by videoconference. The court shall consult with
13 the child in a developmentally appropriate manner regarding the
14 child's permanency plan, if the child is four years of age or older
15 and if the court determines it is in the best interest of the child.
16 Failure by the child to attend a hearing does not affect the
17 validity of an order rendered at the hearing.

18 SECTION 7. Section 263.303(b), Family Code, is amended to
19 read as follows:

20 (b) The permanency progress report must:

21 (1) recommend that the suit be dismissed; or

22 (2) recommend that the suit continue, and:

23 (A) identify the date for dismissal of the suit
24 under this chapter;

25 (B) provide:

26 (i) the name of any person entitled to
27 notice under Chapter 102 who has not been served;

1 (ii) a description of the efforts by the
2 department or another agency to locate and request service of
3 citation; and

4 (iii) a description of each parent's
5 assistance in providing information necessary to locate an unserved
6 party;

7 (C) evaluate the parties' compliance with
8 temporary orders and with the service plan;

9 (D) evaluate whether the child's placement in
10 substitute care meets the child's needs and recommend other plans
11 or services to meet the child's special needs or circumstances;

12 (E) describe the permanency plan for the child
13 and recommend actions necessary to ensure that a final order
14 consistent with that permanency plan is rendered before the date
15 for dismissal of the suit under this chapter; ~~and~~

16 (F) with respect to a child 16 years of age or
17 older, identify the services needed to assist the child in the
18 transition to adult life; and

19 (G) with respect to a child committed to the
20 Texas Youth Commission or released under supervision by the Texas
21 Youth Commission:

22 (i) evaluate whether the child's needs for
23 treatment and education are being met;

24 (ii) describe, using information provided
25 by the Texas Youth Commission, the child's progress in any
26 rehabilitation program administered by the Texas Youth Commission;

27 and

1 (iii) recommend other plans or services to
2 meet the child's needs.

3 SECTION 8. Section 263.306(a), Family Code, is amended to
4 read as follows:

5 (a) At each permanency hearing the court shall:

6 (1) identify all persons or parties present at the
7 hearing or those given notice but failing to appear;

8 (2) review the efforts of the department or another
9 agency in:

10 (A) attempting to locate all necessary persons;

11 (B) requesting service of citation; and

12 (C) obtaining the assistance of a parent in
13 providing information necessary to locate an absent parent, alleged
14 father, or relative of the child;

15 (3) review the efforts of each custodial parent,
16 alleged father, or relative of the child before the court in
17 providing information necessary to locate another absent parent,
18 alleged father, or relative of the child;

19 (4) return the child to the parent or parents if the
20 child's parent or parents are willing and able to provide the child
21 with a safe environment and the return of the child is in the
22 child's best interest;

23 (5) place the child with a person or entity, other than
24 a parent, entitled to service under Chapter 102 if the person or
25 entity is willing and able to provide the child with a safe
26 environment and the placement of the child is in the child's best
27 interest;

1 (6) evaluate the department's efforts to identify
2 relatives who could provide the child with a safe environment, if
3 the child is not returned to a parent or another person or entity
4 entitled to service under Chapter 102;

5 (7) evaluate the parties' compliance with temporary
6 orders and the service plan;

7 (8) determine whether:

8 (A) the child continues to need substitute care;

9 (B) the child's current placement is appropriate
10 for meeting the child's needs, including with respect to a child who
11 has been placed outside of the state, whether that placement
12 continues to be in the best interest of the child; and

13 (C) other plans or services are needed to meet
14 the child's special needs or circumstances;

15 (9) if the child is placed in institutional care,
16 determine whether efforts have been made to ensure placement of the
17 child in the least restrictive environment consistent with the best
18 interest and special needs of the child;

19 (10) if the child is 16 years of age or older, order
20 services that are needed to assist the child in making the
21 transition from substitute care to independent living if the
22 services are available in the community;

23 (11) determine plans, services, and further temporary
24 orders necessary to ensure that a final order is rendered before the
25 date for dismissal of the suit under this chapter; ~~and~~

26 (12) if the child is committed to the Texas Youth
27 Commission or released under supervision by the Texas Youth

1 Commission, determine whether the child's needs for treatment,
2 rehabilitation, and education are being met; and

3 (13) determine the date for dismissal of the suit
4 under this chapter and give notice in open court to all parties of:

5 (A) the dismissal date;

6 (B) the date of the next permanency hearing; and

7 (C) the date the suit is set for trial.

8 SECTION 9. Section 263.501, Family Code, is amended by
9 amending Subsection (f) and adding Subsection (g) to read as
10 follows:

11 (f) The child shall attend each placement review hearing
12 unless the court specifically excuses the child's attendance. A
13 child committed to the Texas Youth Commission may attend a
14 placement review hearing in person, by telephone, or by
15 videoconference. The court shall consult with the child in a
16 developmentally appropriate manner regarding the child's
17 permanency or transition plan, if the child is four years of age or
18 older. Failure by the child to attend a hearing does not affect the
19 validity of an order rendered at the hearing.

20 (g) A court required to conduct placement review hearings
21 for a child for whom the department has been appointed permanent
22 managing conservator may not dismiss a suit affecting the
23 parent-child relationship filed by the department regarding the
24 child while the child is committed to the Texas Youth Commission or
25 released under the supervision of the Texas Youth Commission,
26 unless the child is adopted or permanent managing conservatorship
27 of the child is awarded to an individual other than the department.

1 SECTION 10. Section 263.502(c), Family Code, is amended to
2 read as follows:

3 (c) The placement review report must:

4 (1) evaluate whether the child's current placement is
5 appropriate for meeting the child's needs;

6 (2) evaluate whether efforts have been made to ensure
7 placement of the child in the least restrictive environment
8 consistent with the best interest and special needs of the child if
9 the child is placed in institutional care;

10 (3) contain a discharge plan for a child who is at
11 least 16 years of age that identifies the services and specific
12 tasks that are needed to assist the child in making the transition
13 from substitute care to adult living and describes the services
14 that are available through the Preparation for Adult Living Program
15 operated by the department;

16 (4) evaluate whether the child's current educational
17 placement is appropriate for meeting the child's academic needs;

18 (5) identify other plans or services that are needed
19 to meet the child's special needs or circumstances; ~~and~~

20 (6) describe the efforts of the department or
21 authorized agency to place the child for adoption if parental
22 rights to the child have been terminated and the child is eligible
23 for adoption, including efforts to provide adoption promotion and
24 support services as defined by 42 U.S.C. Section 629a and other
25 efforts consistent with the federal Adoption and Safe Families Act
26 of 1997 (Pub. L. No. 105-89); and

27 (7) with respect to a child committed to the Texas

1 Youth Commission or released under supervision by the Texas Youth
2 Commission:

3 (A) evaluate whether the child's needs for
4 treatment and education are being met;

5 (B) describe, using information provided by the
6 Texas Youth Commission, the child's progress in any rehabilitation
7 program administered by the Texas Youth Commission; and

8 (C) recommend other plans or services to meet the
9 child's needs.

10 SECTION 11. Section 263.503, Family Code, is amended to
11 read as follows:

12 Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE. At
13 each placement review hearing, the court shall determine whether:

14 (1) the child's current placement is necessary, safe,
15 and appropriate for meeting the child's needs, including with
16 respect to a child placed outside of the state, whether the
17 placement continues to be appropriate and in the best interest of
18 the child;

19 (2) efforts have been made to ensure placement of the
20 child in the least restrictive environment consistent with the best
21 interest and special needs of the child if the child is placed in
22 institutional care;

23 (3) the services that are needed to assist a child who
24 is at least 16 years of age in making the transition from substitute
25 care to independent living are available in the community;

26 (4) other plans or services are needed to meet the
27 child's special needs or circumstances;

1 (5) the department or authorized agency has exercised
2 due diligence in attempting to place the child for adoption if
3 parental rights to the child have been terminated and the child is
4 eligible for adoption; ~~and~~

5 (6) the department or authorized agency has made
6 reasonable efforts to finalize the permanency plan that is in
7 effect for the child; and

8 (7) if the child is committed to the Texas Youth
9 Commission or released under supervision by the Texas Youth
10 Commission, the child's needs for treatment, rehabilitation, and
11 education are being met.

12 SECTION 12. Section 264.0091, Family Code, is amended to
13 read as follows:

14 Sec. 264.0091. USE OF TELECONFERENCING AND
15 VIDEOCONFERENCING TECHNOLOGY. Subject to the availability of
16 funds, the department, in cooperation with district and county
17 courts, shall expand the use of teleconferencing and
18 videoconferencing to facilitate participation by medical experts,
19 children, and other individuals in court proceedings, including
20 children for whom the department, an authorized agency, or a
21 licensed child-placing agency has been appointed managing
22 conservator and who are committed to the Texas Youth Commission.

23 SECTION 13. Section 61.0731, Human Resources Code, is
24 amended by adding Subsection (d) to read as follows:

25 (d) Notwithstanding Subsection (a), if the Department of
26 Family and Protective Services has been appointed managing
27 conservator for a child, the commission shall disclose records and

1 other information concerning the child to the department as
2 provided by department rules.

3 SECTION 14. Section 61.0763, Human Resources Code, as added
4 by Chapter 263 (S.B. 103), Acts of the 80th Legislature, Regular
5 Session, 2007, is amended by adding Subsection (e) to read as
6 follows:

7 (e) The commission shall ensure that if the Department of
8 Family and Protective Services has been appointed managing
9 conservator of a child, the department is given the same rights as
10 the child's parent under the parent's bill of rights developed under
11 this section.

12 SECTION 15. Subchapter E, Chapter 61, Human Resources Code,
13 is amended by adding Sections 61.0766 and 61.0767 to read as
14 follows:

15 Sec. 61.0766. REPORT CONCERNING FOSTER CHILDREN COMMITTED
16 TO COMMISSION. (a) Not later than the 10th day before the date of a
17 permanency hearing under Subchapter D, Chapter 263, Family Code, or
18 a placement review hearing under Subchapter F, Chapter 263, Family
19 Code, regarding a child for whom the Department of Family and
20 Protective Services has been appointed managing conservator, a
21 commission caseworker shall submit a written report regarding the
22 child's commitment to the commission to:

- 23 (1) the court;
24 (2) the Department of Family and Protective Services;
25 (3) any attorney ad litem or guardian ad litem
26 appointed for the child; and
27 (4) any volunteer advocate appointed for the child.

1 (b) The report required by Subsection (a) must include:

2 (1) the results of any assessments of the child during
3 the child's commitment to the commission, including assessments of
4 the child's emotional, mental, educational, psychological,
5 psychiatric, medical, or physical needs;

6 (2) information regarding the child's placement in
7 particular programs administered by the commission; and

8 (3) a description of the child's progress in programs
9 administered by the commission.

10 Sec. 61.0767. RULES REGARDING SERVICES FOR FOSTER CHILDREN.

11 (a) The commission and the executive commissioner of the Health and
12 Human Services Commission shall jointly adopt rules to ensure that
13 a child for whom the Department of Family and Protective Services
14 has been appointed managing conservator receives appropriate
15 services while the child is committed to the commission or released
16 under supervision by the commission.

17 (b) The rules adopted under this section must require the
18 commission and the Department of Family and Protective Services to
19 cooperate in providing appropriate services to a child for whom the
20 Department of Family and Protective Services has been appointed
21 managing conservator while the child is committed to the commission
22 or released under supervision by the commission, including:

23 (1) medical care, as defined by Section 266.001,
24 Family Code;

25 (2) mental health treatment and counseling;

26 (3) education, including special education;

27 (4) case management;

1 (5) drug and alcohol abuse assessment or treatment;

2 (6) sex offender treatment; and

3 (7) trauma informed care.

4 (c) The rules adopted under this section must require:

5 (1) the Department of Family and Protective Services

6 to:

7 (A) provide the commission with access to
8 relevant health and education information regarding a child; and

9 (B) require a child's caseworker to visit the
10 child in person at least once each month while the child is
11 committed to the commission;

12 (2) the commission to:

13 (A) provide the Department of Family and
14 Protective Services with relevant health and education information
15 regarding a child;

16 (B) permit communication, including in person,
17 by telephone, and by mail, between a child committed to the
18 commission and:

19 (i) the Department of Family and Protective
20 Services; and

21 (ii) the attorney ad litem, the guardian ad
22 litem, and the volunteer advocate for the child; and

23 (C) provide the Department of Family and
24 Protective Services and any attorney ad litem or guardian ad litem
25 for the child with timely notice of the following events relating to
26 the child:

27 (i) a meeting designed to develop or revise

1 the individual case plan for the child;

2 (ii) in accordance with any participation
3 protocols to which the Department of Family and Protective Services
4 and the commission agree, a medical appointment at which a person
5 authorized to consent to medical care must participate as required
6 by Section 266.004(i), Family Code;

7 (iii) an education meeting, including
8 admission, review, or dismissal meetings for a child receiving
9 special education;

10 (iv) a grievance or disciplinary hearing
11 for the child;

12 (v) a report of abuse or neglect of the
13 child; and

14 (vi) a significant medical condition of the
15 child, as defined by Section 266.005, Family Code; and

16 (3) the Department of Family and Protective Services
17 and the commission to participate in transition planning for the
18 child through release from detention, release under supervision,
19 and discharge.

20 SECTION 16. (a) Not later than April 30, 2010, the executive
21 commissioner of the Health and Human Services Commission and of the
22 Texas Youth Commission shall adopt the rules required by Section
23 61.0767, Human Resources Code, as added by this Act.

24 (b) The changes in law made by this Act apply to an
25 individual for whom the Department of Family and Protective
26 Services or another agency has been appointed managing conservator
27 and who is in the custody of the Texas Youth Commission or released

1 under supervision by the Texas Youth Commission on or after the
2 effective date of this Act, regardless of the date on which the
3 person was committed to the Texas Youth Commission or released
4 under supervision by the Texas Youth Commission.

5 SECTION 17. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2009.