

1-1 By: Naishtat, Madden (Senate Sponsor - Uresti) H.B. No. 1629
1-2 (In the Senate - Received from the House April 29, 2009;
1-3 May 1, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 6, 2009, reported favorably by the following vote:
1-5 Yeas 6, Nays 0; May 6, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the care and protection of foster children committed to
1-9 or released under supervision by the Texas Youth Commission.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 32.001(b), Family Code, is amended to
1-12 read as follows:

1-13 (b) Except as otherwise provided by this subsection, the
1-14 [The] Texas Youth Commission may consent to the medical, dental,
1-15 psychological, and surgical treatment of a child committed to the
1-16 Texas Youth Commission [i~~t~~] under Title 3 when the person having the
1-17 right to consent has been contacted and that person has not given
1-18 actual notice to the contrary. Consent for medical, dental,
1-19 psychological, and surgical treatment of a child for whom the
1-20 Department of Family and Protective Services has been appointed
1-21 managing conservator and who is committed to the Texas Youth
1-22 Commission is governed by Sections 266.004, 266.009, and 266.010.

1-23 SECTION 2. Section 54.04, Family Code, is amended by adding
1-24 Subsection (y) to read as follows:

1-25 (y) A juvenile court conducting a hearing under this section
1-26 involving a child for whom the Department of Family and Protective
1-27 Services has been appointed managing conservator may communicate
1-28 with the court having continuing jurisdiction over the child before
1-29 the disposition hearing. The juvenile court may allow the parties
1-30 to the suit affecting the parent-child relationship in which the
1-31 Department of Family and Protective Services is a party to
1-32 participate in the communication under this subsection.

1-33 SECTION 3. Part 1, Subchapter B, Chapter 107, Family Code,
1-34 is amended by adding Section 107.0161 to read as follows:

1-35 Sec. 107.0161. AD LITEM APPOINTMENTS FOR CHILD COMMITTED TO
1-36 TEXAS YOUTH COMMISSION. If an order appointing the Department of
1-37 Family and Protective Services as managing conservator of a child
1-38 does not continue the appointment of the child's guardian ad litem
1-39 or attorney ad litem and the child is committed to the Texas Youth
1-40 Commission or released under supervision by the Texas Youth
1-41 Commission, the court may appoint a guardian ad litem or attorney ad
1-42 litem for the child.

1-43 SECTION 4. Section 263.001(a)(4), Family Code, is amended
1-44 to read as follows:

1-45 (4) "Substitute care" means the placement of a child
1-46 who is in the conservatorship of the department or an authorized
1-47 agency in care outside the child's home. The term includes foster
1-48 care, institutional care, adoption, [o~~r~~] placement with a relative
1-49 of the child, or commitment to the Texas Youth Commission.

1-50 SECTION 5. Section 263.002, Family Code, is amended to read
1-51 as follows:

1-52 Sec. 263.002. REVIEW OF PLACEMENTS BY COURT. In a suit
1-53 affecting the parent-child relationship in which the department or
1-54 an authorized agency has been appointed by the court or designated
1-55 in an affidavit of relinquishment of parental rights as the
1-56 temporary or permanent managing conservator of a child, the court
1-57 shall hold a hearing to review:

1-58 (1) the conservatorship appointment and substitute
1-59 care; and

1-60 (2) for a child committed to the Texas Youth
1-61 Commission, the child's commitment in the Texas Youth Commission or
1-62 release under supervision by the Texas Youth Commission.

1-63 SECTION 6. Section 263.302, Family Code, is amended to read
1-64 as follows:

2-1 Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. The child
 2-2 shall attend each permanency hearing unless the court specifically
 2-3 excuses the child's attendance. A child committed to the Texas
 2-4 Youth Commission may attend a permanency hearing in person, by
 2-5 telephone, or by videoconference. The court shall consult with
 2-6 the child in a developmentally appropriate manner regarding the
 2-7 child's permanency plan, if the child is four years of age or older
 2-8 and if the court determines it is in the best interest of the child.
 2-9 Failure by the child to attend a hearing does not affect the
 2-10 validity of an order rendered at the hearing.

2-11 SECTION 7. Section 263.303(b), Family Code, is amended to
 2-12 read as follows:

- 2-13 (b) The permanency progress report must:
- 2-14 (1) recommend that the suit be dismissed; or
- 2-15 (2) recommend that the suit continue, and:
- 2-16 (A) identify the date for dismissal of the suit
 2-17 under this chapter;
- 2-18 (B) provide:
- 2-19 (i) the name of any person entitled to
 2-20 notice under Chapter 102 who has not been served;
- 2-21 (ii) a description of the efforts by the
 2-22 department or another agency to locate and request service of
 2-23 citation; and
- 2-24 (iii) a description of each parent's
 2-25 assistance in providing information necessary to locate an unserved
 2-26 party;
- 2-27 (C) evaluate the parties' compliance with
 2-28 temporary orders and with the service plan;
- 2-29 (D) evaluate whether the child's placement in
 2-30 substitute care meets the child's needs and recommend other plans
 2-31 or services to meet the child's special needs or circumstances;
- 2-32 (E) describe the permanency plan for the child
 2-33 and recommend actions necessary to ensure that a final order
 2-34 consistent with that permanency plan is rendered before the date
 2-35 for dismissal of the suit under this chapter; ~~and~~
- 2-36 (F) with respect to a child 16 years of age or
 2-37 older, identify the services needed to assist the child in the
 2-38 transition to adult life; and
- 2-39 (G) with respect to a child committed to the
 2-40 Texas Youth Commission or released under supervision by the Texas
 2-41 Youth Commission:
- 2-42 (i) evaluate whether the child's needs for
 2-43 treatment and education are being met;
- 2-44 (ii) describe, using information provided
 2-45 by the Texas Youth Commission, the child's progress in any
 2-46 rehabilitation program administered by the Texas Youth Commission;
 2-47 and
- 2-48 (iii) recommend other plans or services to
 2-49 meet the child's needs.

2-50 SECTION 8. Section 263.306(a), Family Code, is amended to
 2-51 read as follows:

- 2-52 (a) At each permanency hearing the court shall:
- 2-53 (1) identify all persons or parties present at the
 2-54 hearing or those given notice but failing to appear;
- 2-55 (2) review the efforts of the department or another
 2-56 agency in:
- 2-57 (A) attempting to locate all necessary persons;
- 2-58 (B) requesting service of citation; and
- 2-59 (C) obtaining the assistance of a parent in
 2-60 providing information necessary to locate an absent parent, alleged
 2-61 father, or relative of the child;
- 2-62 (3) review the efforts of each custodial parent,
 2-63 alleged father, or relative of the child before the court in
 2-64 providing information necessary to locate another absent parent,
 2-65 alleged father, or relative of the child;
- 2-66 (4) return the child to the parent or parents if the
 2-67 child's parent or parents are willing and able to provide the child
 2-68 with a safe environment and the return of the child is in the
 2-69 child's best interest;

3-1 (5) place the child with a person or entity, other than
 3-2 a parent, entitled to service under Chapter 102 if the person or
 3-3 entity is willing and able to provide the child with a safe
 3-4 environment and the placement of the child is in the child's best
 3-5 interest;

3-6 (6) evaluate the department's efforts to identify
 3-7 relatives who could provide the child with a safe environment, if
 3-8 the child is not returned to a parent or another person or entity
 3-9 entitled to service under Chapter 102;

3-10 (7) evaluate the parties' compliance with temporary
 3-11 orders and the service plan;

3-12 (8) determine whether:

3-13 (A) the child continues to need substitute care;

3-14 (B) the child's current placement is appropriate
 3-15 for meeting the child's needs, including with respect to a child who
 3-16 has been placed outside of the state, whether that placement
 3-17 continues to be in the best interest of the child; and

3-18 (C) other plans or services are needed to meet
 3-19 the child's special needs or circumstances;

3-20 (9) if the child is placed in institutional care,
 3-21 determine whether efforts have been made to ensure placement of the
 3-22 child in the least restrictive environment consistent with the best
 3-23 interest and special needs of the child;

3-24 (10) if the child is 16 years of age or older, order
 3-25 services that are needed to assist the child in making the
 3-26 transition from substitute care to independent living if the
 3-27 services are available in the community;

3-28 (11) determine plans, services, and further temporary
 3-29 orders necessary to ensure that a final order is rendered before the
 3-30 date for dismissal of the suit under this chapter; ~~and~~

3-31 (12) if the child is committed to the Texas Youth
 3-32 Commission or released under supervision by the Texas Youth
 3-33 Commission, determine whether the child's needs for treatment,
 3-34 rehabilitation, and education are being met; and

3-35 (13) determine the date for dismissal of the suit
 3-36 under this chapter and give notice in open court to all parties of:

3-37 (A) the dismissal date;

3-38 (B) the date of the next permanency hearing; and

3-39 (C) the date the suit is set for trial.

3-40 SECTION 9. Section 263.501, Family Code, is amended by
 3-41 amending Subsection (f) and adding Subsection (g) to read as
 3-42 follows:

3-43 (f) The child shall attend each placement review hearing
 3-44 unless the court specifically excuses the child's attendance. A
 3-45 child committed to the Texas Youth Commission may attend a
 3-46 placement review hearing in person, by telephone, or by
 3-47 videoconference. The court shall consult with the child in a
 3-48 developmentally appropriate manner regarding the child's
 3-49 permanency or transition plan, if the child is four years of age or
 3-50 older. Failure by the child to attend a hearing does not affect the
 3-51 validity of an order rendered at the hearing.

3-52 (g) A court required to conduct placement review hearings
 3-53 for a child for whom the department has been appointed permanent
 3-54 managing conservator may not dismiss a suit affecting the
 3-55 parent-child relationship filed by the department regarding the
 3-56 child while the child is committed to the Texas Youth Commission or
 3-57 released under the supervision of the Texas Youth Commission,
 3-58 unless the child is adopted or permanent managing conservatorship
 3-59 of the child is awarded to an individual other than the department.

3-60 SECTION 10. Section 263.502(c), Family Code, is amended to
 3-61 read as follows:

3-62 (c) The placement review report must:

3-63 (1) evaluate whether the child's current placement is
 3-64 appropriate for meeting the child's needs;

3-65 (2) evaluate whether efforts have been made to ensure
 3-66 placement of the child in the least restrictive environment
 3-67 consistent with the best interest and special needs of the child if
 3-68 the child is placed in institutional care;

3-69 (3) contain a discharge plan for a child who is at

4-1 least 16 years of age that identifies the services and specific
4-2 tasks that are needed to assist the child in making the transition
4-3 from substitute care to adult living and describes the services
4-4 that are available through the Preparation for Adult Living Program
4-5 operated by the department;

4-6 (4) evaluate whether the child's current educational
4-7 placement is appropriate for meeting the child's academic needs;

4-8 (5) identify other plans or services that are needed
4-9 to meet the child's special needs or circumstances; ~~and~~

4-10 (6) describe the efforts of the department or
4-11 authorized agency to place the child for adoption if parental
4-12 rights to the child have been terminated and the child is eligible
4-13 for adoption, including efforts to provide adoption promotion and
4-14 support services as defined by 42 U.S.C. Section 629a and other
4-15 efforts consistent with the federal Adoption and Safe Families Act
4-16 of 1997 (Pub. L. No. 105-89); and

4-17 (7) with respect to a child committed to the Texas
4-18 Youth Commission or released under supervision by the Texas Youth
4-19 Commission:

4-20 (A) evaluate whether the child's needs for
4-21 treatment and education are being met;

4-22 (B) describe, using information provided by the
4-23 Texas Youth Commission, the child's progress in any rehabilitation
4-24 program administered by the Texas Youth Commission; and

4-25 (C) recommend other plans or services to meet the
4-26 child's needs.

4-27 SECTION 11. Section 263.503, Family Code, is amended to
4-28 read as follows:

4-29 Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE. At
4-30 each placement review hearing, the court shall determine whether:

4-31 (1) the child's current placement is necessary, safe,
4-32 and appropriate for meeting the child's needs, including with
4-33 respect to a child placed outside of the state, whether the
4-34 placement continues to be appropriate and in the best interest of
4-35 the child;

4-36 (2) efforts have been made to ensure placement of the
4-37 child in the least restrictive environment consistent with the best
4-38 interest and special needs of the child if the child is placed in
4-39 institutional care;

4-40 (3) the services that are needed to assist a child who
4-41 is at least 16 years of age in making the transition from substitute
4-42 care to independent living are available in the community;

4-43 (4) other plans or services are needed to meet the
4-44 child's special needs or circumstances;

4-45 (5) the department or authorized agency has exercised
4-46 due diligence in attempting to place the child for adoption if
4-47 parental rights to the child have been terminated and the child is
4-48 eligible for adoption; ~~and~~

4-49 (6) the department or authorized agency has made
4-50 reasonable efforts to finalize the permanency plan that is in
4-51 effect for the child; and

4-52 (7) if the child is committed to the Texas Youth
4-53 Commission or released under supervision by the Texas Youth
4-54 Commission, the child's needs for treatment, rehabilitation, and
4-55 education are being met.

4-56 SECTION 12. Section 264.0091, Family Code, is amended to
4-57 read as follows:

4-58 Sec. 264.0091. USE OF TELECONFERENCING AND
4-59 VIDEOCONFERENCING TECHNOLOGY. Subject to the availability of
4-60 funds, the department, in cooperation with district and county
4-61 courts, shall expand the use of teleconferencing and
4-62 videoconferencing to facilitate participation by medical experts,
4-63 children, and other individuals in court proceedings, including
4-64 children for whom the department, an authorized agency, or a
4-65 licensed child-placing agency has been appointed managing
4-66 conservator and who are committed to the Texas Youth Commission.

4-67 SECTION 13. Section 61.0731, Human Resources Code, is
4-68 amended by adding Subsection (d) to read as follows:

4-69 (d) Notwithstanding Subsection (a), if the Department of

5-1 Family and Protective Services has been appointed managing
5-2 conservator for a child, the commission shall disclose records and
5-3 other information concerning the child to the department as
5-4 provided by department rules.

5-5 SECTION 14. Section 61.0763, Human Resources Code, as added
5-6 by Chapter 263 (S.B. 103), Acts of the 80th Legislature, Regular
5-7 Session, 2007, is amended by adding Subsection (e) to read as
5-8 follows:

5-9 (e) The commission shall ensure that if the Department of
5-10 Family and Protective Services has been appointed managing
5-11 conservator of a child, the department is given the same rights as
5-12 the child's parent under the parent's bill of rights developed under
5-13 this section.

5-14 SECTION 15. Subchapter E, Chapter 61, Human Resources Code,
5-15 is amended by adding Sections 61.0766 and 61.0767 to read as
5-16 follows:

5-17 Sec. 61.0766. REPORT CONCERNING FOSTER CHILDREN COMMITTED
5-18 TO COMMISSION. (a) Not later than the 10th day before the date of a
5-19 permanency hearing under Subchapter D, Chapter 263, Family Code, or
5-20 a placement review hearing under Subchapter F, Chapter 263, Family
5-21 Code, regarding a child for whom the Department of Family and
5-22 Protective Services has been appointed managing conservator, a
5-23 commission caseworker shall submit a written report regarding the
5-24 child's commitment to the commission to:

- 5-25 (1) the court;
- 5-26 (2) the Department of Family and Protective Services;
- 5-27 (3) any attorney ad litem or guardian ad litem
5-28 appointed for the child; and
- 5-29 (4) any volunteer advocate appointed for the child.

5-30 (b) The report required by Subsection (a) must include:

- 5-31 (1) the results of any assessments of the child during
5-32 the child's commitment to the commission, including assessments of
5-33 the child's emotional, mental, educational, psychological,
5-34 psychiatric, medical, or physical needs;
- 5-35 (2) information regarding the child's placement in
5-36 particular programs administered by the commission; and
- 5-37 (3) a description of the child's progress in programs
5-38 administered by the commission.

5-39 Sec. 61.0767. RULES REGARDING SERVICES FOR FOSTER CHILDREN.

5-40 (a) The commission and the executive commissioner of the Health and
5-41 Human Services Commission shall jointly adopt rules to ensure that
5-42 a child for whom the Department of Family and Protective Services
5-43 has been appointed managing conservator receives appropriate
5-44 services while the child is committed to the commission or released
5-45 under supervision by the commission.

5-46 (b) The rules adopted under this section must require the
5-47 commission and the Department of Family and Protective Services to
5-48 cooperate in providing appropriate services to a child for whom the
5-49 Department of Family and Protective Services has been appointed
5-50 managing conservator while the child is committed to the commission
5-51 or released under supervision by the commission, including:

- 5-52 (1) medical care, as defined by Section 266.001,
5-53 Family Code;
- 5-54 (2) mental health treatment and counseling;
- 5-55 (3) education, including special education;
- 5-56 (4) case management;
- 5-57 (5) drug and alcohol abuse assessment or treatment;
- 5-58 (6) sex offender treatment; and
- 5-59 (7) trauma informed care.

5-60 (c) The rules adopted under this section must require:

- 5-61 (1) the Department of Family and Protective Services
5-62 to:

5-63 (A) provide the commission with access to
5-64 relevant health and education information regarding a child; and

5-65 (B) require a child's caseworker to visit the
5-66 child in person at least once each month while the child is
5-67 committed to the commission;

- 5-68 (2) the commission to:
5-69 (A) provide the Department of Family and

6-1 Protective Services with relevant health and education information
6-2 regarding a child;
6-3 (B) permit communication, including in person,
6-4 by telephone, and by mail, between a child committed to the
6-5 commission and:
6-6 (i) the Department of Family and Protective
6-7 Services; and
6-8 (ii) the attorney ad litem, the guardian ad
6-9 litem, and the volunteer advocate for the child; and
6-10 (C) provide the Department of Family and
6-11 Protective Services and any attorney ad litem or guardian ad litem
6-12 for the child with timely notice of the following events relating to
6-13 the child:
6-14 (i) a meeting designed to develop or revise
6-15 the individual case plan for the child;
6-16 (ii) in accordance with any participation
6-17 protocols to which the Department of Family and Protective Services
6-18 and the commission agree, a medical appointment at which a person
6-19 authorized to consent to medical care must participate as required
6-20 by Section 266.004(i), Family Code;
6-21 (iii) an education meeting, including
6-22 admission, review, or dismissal meetings for a child receiving
6-23 special education;
6-24 (iv) a grievance or disciplinary hearing
6-25 for the child;
6-26 (v) a report of abuse or neglect of the
6-27 child; and
6-28 (vi) a significant medical condition of the
6-29 child, as defined by Section 266.005, Family Code; and
6-30 (3) the Department of Family and Protective Services
6-31 and the commission to participate in transition planning for the
6-32 child through release from detention, release under supervision,
6-33 and discharge.
6-34 SECTION 16. (a) Not later than April 30, 2010, the executive
6-35 commissioner of the Health and Human Services Commission and of the
6-36 Texas Youth Commission shall adopt the rules required by Section
6-37 61.0767, Human Resources Code, as added by this Act.
6-38 (b) The changes in law made by this Act apply to an
6-39 individual for whom the Department of Family and Protective
6-40 Services or another agency has been appointed managing conservator
6-41 and who is in the custody of the Texas Youth Commission or released
6-42 under supervision by the Texas Youth Commission on or after the
6-43 effective date of this Act, regardless of the date on which the
6-44 person was committed to the Texas Youth Commission or released
6-45 under supervision by the Texas Youth Commission.
6-46 SECTION 17. This Act takes effect immediately if it receives
6-47 a vote of two-thirds of all the members elected to each house, as
6-48 provided by Section 39, Article III, Texas Constitution. If this
6-49 Act does not receive the vote necessary for immediate effect, this
6-50 Act takes effect September 1, 2009.

6-51

* * * * *