

By: Zerwas

H.B. No. 792

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the notice requirements for and effective date of a
3 service plan filed by the Department of Family and Protective
4 Services with regard to a child.

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

6 SECTION 1. Section 263.102, Family Code, is amended by
7 adding Subsection (b-1) to read as follows:

8 (b-1) Unless otherwise ordered by a court, a service plan
9 must include the following statement prominently displayed
10 immediately above each parent's signature in at least 12-point type
11 that is boldfaced and capitalized:

12 THIS SERVICE PLAN IS NOT MANDATORY. THIS SERVICE PLAN IS
13 MERELY A RECOMMENDATION BY THE DEPARTMENT OF FAMILY AND PROTECTIVE
14 SERVICES. YOU ARE NOT REQUIRED TO SIGN IT. ALTHOUGH YOU MAY SIGN IT
15 IF YOU DESIRE, THE FULFILLMENT OF THE REQUIREMENTS OF THIS SERVICE
16 PLAN WILL NOT NECESSARILY ASSURE THE RETURN OF YOUR CHILD. YOUR
17 REFUSAL TO SIGN THIS SERVICE PLAN IS NOT AN ADMISSION OF CHILD ABUSE
18 OR NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN
19 ADMISSION OF CHILD ABUSE OR NEGLECT. A VIOLATION OF THIS SERVICE
20 PLAN CANNOT BE USED AS GROUNDS FOR TERMINATION OF YOUR PARENTAL
21 RIGHTS AND DUTIES. YOU HAVE THE RIGHT TO CONSULT AN ATTORNEY BEFORE
22 SIGNING THIS SERVICE PLAN.

23 SECTION 2. Sections 263.103(a), (c), and (d), Family Code,
24 are amended to read as follows:

1 (a) Before the service plan is signed, the child's parents
2 and the representative of the department or other agency shall
3 discuss each term and condition of the plan. The representative
4 shall inform the child's parents that compliance with the service
5 plan is voluntary.

6 (c) If the department or other authorized agency determines
7 that the child's parents are unable or unwilling to sign the service
8 plan, a parent or the department may file a motion for a hearing to
9 approve the plan. The court may accept or modify the plan based on
10 the testimony of the parties [~~without the parents' signatures~~].

11 (d) The plan takes effect when:

12 (1) the child's parents and the appropriate
13 representative of the department or other authorized agency sign
14 the plan; or

15 (2) if the child's parents refuse to sign the plan, the
16 court approves the plan [~~the department or other authorized agency~~
17 ~~files the plan without the parents' signatures~~].

18 SECTION 3. Section 263.104, Family Code, is amended by
19 adding Subsection (a-1) and amending Subsection (b) to read as
20 follows:

21 (a-1) If the department or other authorized agency
22 determines that the child's parents are unable or unwilling to sign
23 the amended service plan, a parent or the department may file a
24 motion for a hearing to approve the amended service plan. The court
25 may accept or modify the amended service plan based on the testimony
26 of the parties.

27 (b) The amended service plan supersedes the previously

1 filed service plan and takes effect when:

2 (1) the child's parents and the appropriate
3 representative of the department or other authorized agency sign
4 the plan; or

5 (2) if the child's parents refuse to sign the plan, the
6 court approves the plan [~~the department or other authorized agency~~
7 ~~determines that the child's parents are unable or unwilling to sign~~
8 ~~the amended plan and files it without the parents' signatures~~].

9 SECTION 4. Section 264.751(1), Family Code, is amended to
10 read as follows:

11 (1) "Designated caregiver" means an individual [~~who~~
12 ~~has a longstanding and significant relationship with a child for~~
13 ~~whom the department has been appointed managing conservator and]~~
14 who:

15 (A) is appointed to provide substitute care for
16 a [the] child for whom the department has been appointed managing
17 conservator, but is not licensed by the department or verified by a
18 licensed child-placing agency or the department to operate a foster
19 home, foster group home, agency foster home, or agency foster group
20 home under Chapter 42, Human Resources Code; or

21 (B) is subsequently appointed permanent managing
22 conservator of the child after providing the care described by
23 Paragraph (A).

24 SECTION 5. Section 264.752, Family Code, is amended by
25 adding Subsection (d) to read as follows:

26 (d) There is a rebuttable presumption that placing a child
27 in the care of a person designated by the parent or other person

1 having legal custody of the child is in the best interest of the
2 child.

3 SECTION 6. Section 264.753, Family Code, is amended to read
4 as follows:

5 Sec. 264.753. EXPEDITED PLACEMENT. The department or
6 other authorized entity shall expedite the completion of the
7 background and criminal history check[~~, the home study,~~] and any
8 other administrative procedure to ensure that the child is placed
9 with a qualified relative or caregiver as soon as possible after the
10 date the caregiver is identified.

11 SECTION 7. Section 264.754, Family Code, is amended to read
12 as follows:

13 Sec. 264.754. INVESTIGATION OF [~~PROPOSED~~] PLACEMENT OF
14 CHILD WITH RELATIVE OR DESIGNATED CAREGIVER. After [~~Before~~]
15 placing a child with a proposed relative or other designated
16 caregiver, the department may [~~must~~] conduct a comprehensive [~~an~~]
17 investigation, including a home study, to determine whether the
18 [~~proposed~~] placement provides a safe environment for the child [~~is~~
19 ~~in the child's best interest~~].

20 SECTION 8. The changes in law made by this Act to Sections
21 263.102, 263.103, and 263.104, Family Code, apply only to a service
22 plan filed by the Department of Family and Protective Services and
23 submitted to a child's parent on or after the effective date of this
24 Act. A service plan filed by the department and submitted to a
25 child's parent before the effective date of this Act is governed by
26 the law in effect on the date the service plan was filed, and the
27 former law is continued in effect for that purpose.

1 SECTION 9. The changes in law made by this Act to Sections
2 264.751, 264.752, 264.753, and 264.754, Family Code, apply only to
3 an investigation of a report of child abuse or neglect that is made
4 on or after the effective date of this Act. A report that is made
5 before the effective date of this Act is governed by the law in
6 effect on the date the report was made, and the former law is
7 continued in effect for that purpose.

8 SECTION 10. This Act takes effect September 1, 2011.