

By: West  
(N. Gonzalez of El Paso)

S.B. No. 352

A BILL TO BE ENTITLED

AN ACT

relating to visitation for certain children in the temporary managing conservatorship of the Department of Family and Protective Services.

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

SECTION 1. Subchapter B, Chapter 262, Family Code, is amended by adding Section 262.115 to read as follows:

Sec. 262.115. VISITATION WITH CERTAIN CHILDREN; TEMPORARY VISITATION SCHEDULE. (a) In this section, "department" means the Department of Family and Protective Services.

(b) This section applies only to a child:

(1) who is in the temporary managing conservatorship of the department; and

(2) for whom the department's goal is reunification of the child with the child's parent.

(c) The department shall ensure that a parent who is otherwise entitled to possession of the child has an opportunity to visit the child not later than the third day after the date the department is named temporary managing conservator of the child unless:

(1) the department determines that visitation is not in the child's best interest; or

(2) visitation with the parent would conflict with a court order relating to possession of or access to the child.

1       (d) Before a hearing conducted under Subchapter C, the  
2 department in collaboration with each parent of the child must  
3 develop a temporary visitation schedule for the child's visits with  
4 each parent. The visitation schedule may conform to the  
5 department's minimum visitation policies. The department shall  
6 consider the factors listed in Section 263.107(c) in developing the  
7 temporary visitation schedule. Unless modified by court order, the  
8 schedule remains in effect until a visitation plan is developed  
9 under Section 263.107.

10       (e) The department may include the temporary visitation  
11 schedule in any report the department submits to the court before or  
12 during a hearing under Subchapter C. The court may render any  
13 necessary order regarding the temporary visitation schedule.

14       SECTION 2. The heading to Chapter 263, Family Code, is  
15 amended to read as follows:

16       CHAPTER 263. REVIEW OF PLACEMENT OF CHILDREN UNDER CARE OF  
17 DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES

18       SECTION 3. The heading to Subchapter B, Chapter 263, Family  
19 Code, is amended to read as follows:

20       SUBCHAPTER B. SERVICE PLAN AND VISITATION PLAN

21       SECTION 4. Subchapter B, Chapter 263, Family Code, is  
22 amended by adding Sections 263.107, 263.108, and 263.109 to read as  
23 follows:

24       Sec. 263.107. VISITATION PLAN. (a) This section applies  
25 only to a child in the temporary managing conservatorship of the  
26 department for whom the department's goal is reunification of the  
27 child with the child's parent.

1       (b) Not later than the 30th day after the date the  
2 department is named temporary managing conservator of a child, the  
3 department in collaboration with each parent of the child shall  
4 develop a visitation plan.

5       (c) In determining the frequency and circumstances of  
6 visitation under this section, the department must consider:

7           (1) the safety and best interest of the child;

8           (2) the age of the child;

9           (3) the desires of each parent regarding visitation  
10 with the child;

11           (4) the location of each parent and the child; and

12           (5) the resources available to the department,  
13 including the resources to:

14           (A) ensure that visitation is properly  
15 supervised by a department employee or an available and willing  
16 volunteer the department determines suitable after conducting a  
17 background and criminal history check; and

18           (B) provide transportation to and from visits.

19       (d) Not later than the 10th day before the date of a status  
20 hearing under Section 263.201, the department shall file with the  
21 court a copy of the visitation plan developed under this section.

22       (e) The department may amend the visitation plan on mutual  
23 agreement of the child's parents and the department or as the  
24 department considers necessary to ensure the safety of the child.  
25 An amendment to the visitation plan must be in the child's best  
26 interest. The department shall file a copy of any amended  
27 visitation plan with the court.

1       (f) A visitation plan developed under this section may not  
2 conflict with a court order relating to possession of or access to  
3 the child.

4       Sec. 263.108. REVIEW OF VISITATION PLAN; MODIFICATION.

5       (a) At the first hearing held under this chapter after the date an  
6 original or amended visitation plan is filed with the court under  
7 Section 263.107, the court shall review the visitation plan, taking  
8 into consideration the factors specified in Section 263.107(c).

9       (b) The court may modify, or order the department to modify,  
10 an original or amended visitation plan at any time.

11       (c) A parent who is entitled to visitation under a  
12 visitation plan may at any time file a motion with the court to  
13 request review and modification of an original or amended  
14 visitation plan.

15       Sec. 263.109. COURT IMPLEMENTATION OF VISITATION PLAN.

16       (a) After reviewing an original or amended visitation plan, the  
17 court shall render an order regarding a parent's visitation with a  
18 child that the court determines appropriate.

19       (b) If the court finds that visitation between a child and a  
20 parent is not in the child's best interest, the court shall render  
21 an order that:

22               (1) states the reasons for finding that visitation is  
23 not in the child's best interest; and

24               (2) outlines specific steps the parent must take to be  
25 allowed to have visitation with the child.

26       (c) If the order regarding visitation between a child and a  
27 parent requires supervised visitation to protect the health and

1 safety of the child, the order must outline specific steps the  
2 parent must take to have the level of supervision reduced.

3 SECTION 5. Subsection (a), Section 263.306, Family Code, is  
4 amended to 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) review any visitation plan or amended plan  
20 required under Section 263.107 and render any orders for visitation  
21 the court determines necessary;

22 (5) return the child to the parent or parents if the  
23 child's parent or parents are willing and able to provide the child  
24 with a safe environment and the return of the child is in the  
25 child's best interest;

26 (6) [~~5~~] place the child with a person or entity,  
27 other than a parent, entitled to service under Chapter 102 if the

1 person or entity is willing and able to provide the child with a  
2 safe environment and the placement of the child is in the child's  
3 best interest;

4 (7) [~~(6)~~] evaluate the department's efforts to  
5 identify relatives who could provide the child with a safe  
6 environment, if the child is not returned to a parent or another  
7 person or entity entitled to service under Chapter 102;

8 (8) [~~(7)~~] evaluate the parties' compliance with  
9 temporary orders and the service plan;

10 (9) [~~(8)~~] determine whether:

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

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

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

18 (10) [~~(9)~~] if the child is placed in institutional  
19 care, determine whether efforts have been made to ensure placement  
20 of the child in the least restrictive environment consistent with  
21 the best interest and special needs of the child;

22 (11) [~~(10)~~] if the child is 16 years of age or older,  
23 order services that are needed to assist the child in making the  
24 transition from substitute care to independent living if the  
25 services are available in the community;

26 (12) [~~(11)~~] determine plans, services, and further  
27 temporary orders necessary to ensure that a final order is rendered

1 before the date for dismissal of the suit under this chapter;

2           (13) [~~(12)~~] if the child is committed to the Texas  
3 Juvenile Justice Department [~~Youth Commission~~] or released under  
4 supervision by the Texas Juvenile Justice Department [~~Youth~~  
5 ~~Commission~~], determine whether the child's needs for treatment,  
6 rehabilitation, and education are being met; and

7           (14) [~~(13)~~] determine the date for dismissal of the  
8 suit under this chapter and give notice in open court to all parties  
9 of:

10                           (A) the dismissal date;

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

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

13           SECTION 6. Subdivision (3), Subsection (a), Section  
14 411.114, Government Code, as amended by Chapters 598 (S.B. 218),  
15 1056 (S.B. 221), and 1082 (S.B. 1178), Acts of the 82nd Legislature,  
16 Regular Session, 2011, is reenacted and amended to read as follows:

17           (3) The Department of Family and Protective Services  
18 is entitled to obtain from the department criminal history record  
19 information maintained by the department that relates to a person  
20 who is:

21                           (A) a volunteer or applicant volunteer with a  
22 local affiliate in this state of Big Brothers/Big Sisters of  
23 America;

24                           (B) a volunteer or applicant volunteer with the  
25 "I Have a Dream/Houston" program;

26                           (C) a volunteer or applicant volunteer with an  
27 organization that provides court-appointed special advocates for

1 abused or neglected children;

2 (D) a person providing, at the request of the  
3 child's parent, in-home care for a child who is the subject of a  
4 report alleging the child has been abused or neglected;

5 (E) a volunteer or applicant volunteer with a  
6 Texas chapter of the Make-a-Wish Foundation of America;

7 (F) a person providing, at the request of the  
8 child's parent, in-home care for a child only if the person gives  
9 written consent to the release and disclosure of the information;

10 (G) a child who is related to the caretaker, as  
11 determined under Section 42.002, Human Resources Code, and who  
12 resides in or is present in a child-care facility or family home,  
13 other than a child described by Subdivision (2)(C), or any other  
14 person who has unsupervised access to a child in the care of a  
15 child-care facility or family home;

16 (H) an applicant for a position with the  
17 Department of Family and Protective Services, other than a position  
18 described by Subdivision (2)(D), regardless of the duties of the  
19 position;

20 (I) a volunteer or applicant volunteer with the  
21 Department of Family and Protective Services, other than a  
22 registered volunteer, regardless of the duties to be performed;

23 (J) a person providing or applying to provide  
24 in-home, adoptive, or foster care for children to the extent  
25 necessary to comply with Subchapter B, Chapter 162, Family Code;

26 (K) a Department of Family and Protective  
27 Services employee, other than an employee described by Subdivision



1 (2)(H), regardless of the duties of the employee's position;

2 (L) a relative of a child in the care of the  
3 Department of Family and Protective Services, to the extent  
4 necessary to comply with Section 162.007, Family Code;

5 (M) a person, other than an alleged perpetrator  
6 in a report described in Subdivision (2)(I), living in the  
7 residence in which the alleged victim of the report resides;

8 (N) a contractor or an employee of a contractor  
9 who delivers services to a ward of the Department of Family and  
10 Protective Services under a contract with the estate of the ward;

11 (O) a person who seeks unsupervised visits with a  
12 ward of the Department of Family and Protective Services, including  
13 a relative of the ward;

14 (P) an employee, volunteer, or applicant  
15 volunteer of a children's advocacy center under Subchapter E,  
16 Chapter 264, Family Code, including a member of the governing board  
17 of a center; [~~or~~]

18 (Q) an employee of, an applicant for employment  
19 with, or a volunteer or an applicant volunteer with an entity or  
20 person that contracts with the Department of Family and Protective  
21 Services and has access to confidential information in the  
22 department's records, if the employee, applicant, volunteer, or  
23 applicant volunteer has or will have access to that confidential  
24 information;

25 (R) [~~(Q)~~] an employee of or volunteer at, or an  
26 applicant for employment with or to be a volunteer at, an entity  
27 that provides supervised independent living services to a young

1 adult receiving extended foster care services from the Department  
2 of Family and Protective Services; ~~or~~

3 (S) ~~(R)~~ a person 14 years of age or older who  
4 will be regularly or frequently working or staying in a host home  
5 that is providing supervised independent living services to a young  
6 adult receiving extended foster care services from the Department  
7 of Family and Protective Services; or

8 (T) a person who volunteers to supervise  
9 visitation under Subchapter B, Chapter 263, Family Code.

10 SECTION 7. The changes in law made by this Act apply only to  
11 a child who is taken into possession by the Department of Family and  
12 Protective Services on or after the effective date of this Act. A  
13 child taken into possession by the Department of Family and  
14 Protective Services before the effective date of this Act is  
15 governed by the law in effect on the date the child was taken into  
16 possession, and the former law is continued in effect for that  
17 purpose.

18 SECTION 8. To the extent of any conflict, this Act prevails  
19 over another Act of the 83rd Legislature, Regular Session, 2013,  
20 relating to nonsubstantive additions to and corrections in enacted  
21 codes.

22 SECTION 9. This Act takes effect September 1, 2013.