

1-1 By: West S.B. No. 352
 1-2 (In the Senate - Filed February 4, 2013; February 11, 2013,
 1-3 read first time and referred to Committee on Jurisprudence;
 1-4 March 25, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 0; March 25, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 352 By: Paxton

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to visitation for certain children in the temporary
 1-20 managing conservatorship of the Department of Family and Protective
 1-21 Services.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subchapter B, Chapter 262, Family Code, is
 1-24 amended by adding Section 262.115 to read as follows:

1-25 Sec. 262.115. VISITATION WITH CERTAIN CHILDREN; TEMPORARY
 1-26 VISITATION SCHEDULE. (a) In this section, "department" means the
 1-27 Department of Family and Protective Services.

1-28 (b) This section applies only to a child:

1-29 (1) who is in the temporary managing conservatorship
 1-30 of the department; and

1-31 (2) for whom the department's goal is reunification of
 1-32 the child with the child's parent.

1-33 (c) The department shall ensure that a parent who is
 1-34 otherwise entitled to possession of the child has an opportunity to
 1-35 visit the child not later than the third day after the date the
 1-36 department is named temporary managing conservator of the child
 1-37 unless:

1-38 (1) the department determines that visitation is not
 1-39 in the child's best interest; or

1-40 (2) visitation with the parent would conflict with a
 1-41 court order relating to possession of or access to the child.

1-42 (d) Before a hearing conducted under Subchapter C, the
 1-43 department in collaboration with each parent of the child must
 1-44 develop a temporary visitation schedule that allows the most visits
 1-45 between the child and each parent of the child. The department
 1-46 shall consider the factors listed in Section 263.107(c) in
 1-47 developing the temporary visitation schedule. Unless modified by
 1-48 court order, the schedule remains in effect until a visitation plan
 1-49 is developed under Section 263.107.

1-50 (e) The department may include the temporary visitation
 1-51 schedule in any report the department submits to the court before or
 1-52 during a hearing under Subchapter C. The court may render any
 1-53 necessary order regarding the temporary visitation schedule.

1-54 SECTION 2. The heading to Chapter 263, Family Code, is
 1-55 amended to read as follows:

1-56 CHAPTER 263. REVIEW OF PLACEMENT OF CHILDREN UNDER CARE OF
 1-57 DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES

1-58 SECTION 3. The heading to Subchapter B, Chapter 263, Family
 1-59 Code, is amended to read as follows:

1-60 SUBCHAPTER B. SERVICE PLAN AND VISITATION PLAN

2-1 SECTION 4. Subchapter B, Chapter 263, Family Code, is
 2-2 amended by adding Sections 263.107, 263.108, and 263.109 to read as
 2-3 follows:

2-4 Sec. 263.107. VISITATION PLAN. (a) This section applies
 2-5 only to a child in the temporary managing conservatorship of the
 2-6 department for whom the department's goal is reunification of the
 2-7 child with the child's parent.

2-8 (b) Not later than the 30th day after the date the
 2-9 department is named temporary managing conservator of a child, the
 2-10 department in collaboration with each parent of the child shall
 2-11 develop a visitation plan that allows the most visits between the
 2-12 child and each parent of the child.

2-13 (c) In determining the frequency and circumstances of
 2-14 visitation under this section, the department must consider:

2-15 (1) the safety and best interest of the child;

2-16 (2) the age of the child;

2-17 (3) the desires of each parent regarding visitation
 2-18 with the child;

2-19 (4) the location of each parent and the child; and

2-20 (5) the resources available to the department,
 2-21 including the resources to:

2-22 (A) ensure that visitation is properly
 2-23 supervised by a department employee or an available and willing
 2-24 volunteer the department determines suitable after conducting a
 2-25 background and criminal history check; and

2-26 (B) provide transportation to and from visits.

2-27 (d) Not later than the 10th day before the date of a status
 2-28 hearing under Section 263.201, the department shall file with the
 2-29 court a copy of the visitation plan developed under this section.

2-30 (e) The department may amend the visitation plan on mutual
 2-31 agreement of the child's parents and the department or as the
 2-32 department considers necessary to ensure the safety of the child.
 2-33 An amendment to the visitation plan must be in the child's best
 2-34 interest. The department shall file a copy of any amended
 2-35 visitation plan with the court.

2-36 (f) A visitation plan developed under this section may not
 2-37 conflict with a court order relating to possession of or access to
 2-38 the child.

2-39 Sec. 263.108. REVIEW OF VISITATION PLAN; MODIFICATION.

2-40 (a) At the first hearing held under this chapter after the date an
 2-41 original or amended visitation plan is filed with the court under
 2-42 Section 263.107, the court shall review the visitation plan, taking
 2-43 into consideration the factors specified in Section 263.107(c).

2-44 (b) The court may modify, or order the department to modify,
 2-45 an original or amended visitation plan at any time.

2-46 (c) A parent who is entitled to visitation under a
 2-47 visitation plan may at any time file a motion with the court to
 2-48 request review and modification of an original or amended
 2-49 visitation plan.

2-50 Sec. 263.109. COURT IMPLEMENTATION OF VISITATION PLAN.

2-51 (a) After reviewing an original or amended visitation plan, the
 2-52 court shall render an order regarding a parent's visitation with a
 2-53 child that the court determines appropriate.

2-54 (b) If the court finds that visitation between a child and a
 2-55 parent is not in the child's best interest, the court shall render
 2-56 an order that:

2-57 (1) states the reasons for finding that visitation is
 2-58 not in the child's best interest; and

2-59 (2) outlines specific steps the parent must take to be
 2-60 allowed to have visitation with the child.

2-61 (c) If the order regarding visitation between a child and a
 2-62 parent requires supervised visitation to protect the health and
 2-63 safety of the child, the order must outline specific steps the
 2-64 parent must take to have the level of supervision reduced.

2-65 SECTION 5. Subsection (a), Section 263.306, Family Code, is
 2-66 amended to read as follows:

2-67 (a) At each permanency hearing the court shall:

2-68 (1) identify all persons or parties present at the
 2-69 hearing or those given notice but failing to appear;

3-1 (2) review the efforts of the department or another
3-2 agency in:

3-3 (A) attempting to locate all necessary persons;
3-4 (B) requesting service of citation; and
3-5 (C) obtaining the assistance of a parent in
3-6 providing information necessary to locate an absent parent, alleged
3-7 father, or relative of the child;

3-8 (3) review the efforts of each custodial parent,
3-9 alleged father, or relative of the child before the court in
3-10 providing information necessary to locate another absent parent,
3-11 alleged father, or relative of the child;

3-12 (4) review any visitation plan or amended plan
3-13 required under Section 263.107 and render any orders for visitation
3-14 the court determines necessary;

3-15 (5) return the child to the parent or parents if the
3-16 child's parent or parents are willing and able to provide the child
3-17 with a safe environment and the return of the child is in the
3-18 child's best interest;

3-19 (6) [~~5~~] place the child with a person or entity,
3-20 other than a parent, entitled to service under Chapter 102 if the
3-21 person or entity is willing and able to provide the child with a
3-22 safe environment and the placement of the child is in the child's
3-23 best interest;

3-24 (7) [~~6~~] evaluate the department's efforts to
3-25 identify relatives who could provide the child with a safe
3-26 environment, if the child is not returned to a parent or another
3-27 person or entity entitled to service under Chapter 102;

3-28 (8) [~~7~~] evaluate the parties' compliance with
3-29 temporary orders and the service plan;

3-30 (9) [~~8~~] determine whether:

3-31 (A) the child continues to need substitute care;
3-32 (B) the child's current placement is appropriate
3-33 for meeting the child's needs, including with respect to a child who
3-34 has been placed outside of the state, whether that placement
3-35 continues to be in the best interest of the child; and
3-36 (C) other plans or services are needed to meet
3-37 the child's special needs or circumstances;

3-38 (10) [~~9~~] if the child is placed in institutional
3-39 care, determine whether efforts have been made to ensure placement
3-40 of the child in the least restrictive environment consistent with
3-41 the best interest and special needs of the child;

3-42 (11) [~~10~~] if the child is 16 years of age or older,
3-43 order services that are needed to assist the child in making the
3-44 transition from substitute care to independent living if the
3-45 services are available in the community;

3-46 (12) [~~11~~] determine plans, services, and further
3-47 temporary orders necessary to ensure that a final order is rendered
3-48 before the date for dismissal of the suit under this chapter;

3-49 (13) [~~12~~] if the child is committed to the Texas
3-50 Juvenile Justice Department [~~Youth Commission~~] or released under
3-51 supervision by the Texas Juvenile Justice Department [~~Youth~~
3-52 ~~Commission~~], determine whether the child's needs for treatment,
3-53 rehabilitation, and education are being met; and

3-54 (14) [~~13~~] determine the date for dismissal of the
3-55 suit under this chapter and give notice in open court to all parties
3-56 of:

3-57 (A) the dismissal date;
3-58 (B) the date of the next permanency hearing; and
3-59 (C) the date the suit is set for trial.

3-60 SECTION 6. Subdivision (3), Subsection (a), Section
3-61 411.114, Government Code, as amended by Chapters 598 (S.B. 218),
3-62 1056 (S.B. 221), and 1082 (S.B. 1178), Acts of the 82nd Legislature,
3-63 Regular Session, 2011, is reenacted and amended to read as follows:
3-64 (3) The Department of Family and Protective Services
3-65 is entitled to obtain from the department criminal history record
3-66 information maintained by the department that relates to a person
3-67 who is:

3-68 (A) a volunteer or applicant volunteer with a
3-69 local affiliate in this state of Big Brothers/Big Sisters of

4-1 America;

4-2 (B) a volunteer or applicant volunteer with the

4-3 "I Have a Dream/Houston" program;

4-4 (C) a volunteer or applicant volunteer with an

4-5 organization that provides court-appointed special advocates for

4-6 abused or neglected children;

4-7 (D) a person providing, at the request of the

4-8 child's parent, in-home care for a child who is the subject of a

4-9 report alleging the child has been abused or neglected;

4-10 (E) a volunteer or applicant volunteer with a

4-11 Texas chapter of the Make-a-Wish Foundation of America;

4-12 (F) a person providing, at the request of the

4-13 child's parent, in-home care for a child only if the person gives

4-14 written consent to the release and disclosure of the information;

4-15 (G) a child who is related to the caretaker, as

4-16 determined under Section 42.002, Human Resources Code, and who

4-17 resides in or is present in a child-care facility or family home,

4-18 other than a child described by Subdivision (2)(C), or any other

4-19 person who has unsupervised access to a child in the care of a

4-20 child-care facility or family home;

4-21 (H) an applicant for a position with the

4-22 Department of Family and Protective Services, other than a position

4-23 described by Subdivision (2)(D), regardless of the duties of the

4-24 position;

4-25 (I) a volunteer or applicant volunteer with the

4-26 Department of Family and Protective Services, other than a

4-27 registered volunteer, regardless of the duties to be performed;

4-28 (J) a person providing or applying to provide

4-29 in-home, adoptive, or foster care for children to the extent

4-30 necessary to comply with Subchapter B, Chapter 162, Family Code;

4-31 (K) a Department of Family and Protective

4-32 Services employee, other than an employee described by Subdivision

4-33 (2)(H), regardless of the duties of the employee's position;

4-34 (L) a relative of a child in the care of the

4-35 Department of Family and Protective Services, to the extent

4-36 necessary to comply with Section 162.007, Family Code;

4-37 (M) a person, other than an alleged perpetrator

4-38 in a report described in Subdivision (2)(I), living in the

4-39 residence in which the alleged victim of the report resides;

4-40 (N) a contractor or an employee of a contractor

4-41 who delivers services to a ward of the Department of Family and

4-42 Protective Services under a contract with the estate of the ward;

4-43 (O) a person who seeks unsupervised visits with a

4-44 ward of the Department of Family and Protective Services, including

4-45 a relative of the ward;

4-46 (P) an employee, volunteer, or applicant

4-47 volunteer of a children's advocacy center under Subchapter E,

4-48 Chapter 264, Family Code, including a member of the governing board

4-49 of a center; ~~[or]~~

4-50 (Q) an employee of, an applicant for employment

4-51 with, or a volunteer or an applicant volunteer with an entity or

4-52 person that contracts with the Department of Family and Protective

4-53 Services and has access to confidential information in the

4-54 department's records, if the employee, applicant, volunteer, or

4-55 applicant volunteer has or will have access to that confidential

4-56 information;

4-57 (R) ~~[(Q)]~~ an employee of or volunteer at, or an

4-58 applicant for employment with or to be a volunteer at, an entity

4-59 that provides supervised independent living services to a young

4-60 adult receiving extended foster care services from the Department

4-61 of Family and Protective Services; ~~[or]~~

4-62 (S) ~~[(R)]~~ a person 14 years of age or older who

4-63 will be regularly or frequently working or staying in a host home

4-64 that is providing supervised independent living services to a young

4-65 adult receiving extended foster care services from the Department

4-66 of Family and Protective Services; or

4-67 (T) a person who volunteers to supervise

4-68 visitation under Subchapter B, Chapter 263, Family Code.

4-69 SECTION 7. The changes in law made by this Act apply only to

5-1 a child who is taken into possession by the Department of Family and
5-2 Protective Services on or after the effective date of this Act. A
5-3 child taken into possession by the Department of Family and
5-4 Protective Services before the effective date of this Act is
5-5 governed by the law in effect on the date the child was taken into
5-6 possession, and the former law is continued in effect for that
5-7 purpose.

5-8 SECTION 8. To the extent of any conflict, this Act prevails
5-9 over another Act of the 83rd Legislature, Regular Session, 2013,
5-10 relating to nonsubstantive additions to and corrections in enacted
5-11 codes.

5-12 SECTION 9. This Act takes effect September 1, 2013.

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