

## **BILL ANALYSIS**

Senate Research Center

S.B. 1407  
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Health & Human Services  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, “normalcy,” the concept that children in state custody should experience the same or similar experiences as children who are not fostered, exists in rule developed by the Department of Family and Protective Services (DFPS) following congressional passage of H.R. 4980 in 2014. This bill makes statutory changes and clarifies the roles, duties, and protections for all parties who are involved in practicing normalcy.

First, S.B. 1407 defines "age-appropriate normalcy activity" in two parts. An age-appropriate activity would be "suitable for a child of a certain age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group." A normalcy activity includes "extracurricular activities, in-school and out-of-school social activities, enrichment activities, and employment opportunities"—activities common to children and youth who do not live within state custody.

Second, S.B. 1407 describes the standard of care that a reasonable and prudent parent—here, a foster parent—should exercise when determining the appropriateness of an activity for a child or young person in foster care. Criteria include, but are not limited to, "the overall health and safety of the child; the child's age, maturity, and development level; the best interest of the child based on the caregiver's knowledge of the child . . . the importance of encouraging the child's social, emotional, and developmental growth; and the importance of providing the child with the most family-like living experience possible."

Third, S.B. 1407 allows foster parents, applying the standard of care of a reasonable and prudent parent, "to make decisions similar to those that a (biological or legal) parent would be entitled to make regarding a child's participation in age-appropriate activities." Under normalcy, DFPS would no longer require the foster parent to submit a form or request DFPS approval prior to making the parenting decision.

Fourth, S.B. 1407 protects the right of the foster parent, other substitute caregiver, and the licensed child placing agency that placed the child with the foster parent, to exercise parental judgment under the reasonable and prudent parent standard of care, by providing immunity to these parties where harm to the child results from participation in a caregiver-approved normalcy activity. For children and youth in foster care to experience a normal childhood, they must be allowed to experience the same bumps and bruises as their non-fostered counterparts. Stakeholders assert that resiliency is a key maturity factor, and that youth in foster care often lag behind their non-fostered counterparts in resiliency and self-sufficiency skills due to overprotective foster parenting. Licensed child placing agencies also hesitate to encourage normalcy, as they fear that a child's injury will compel DFPS to assess punitive actions against them. The bill's protection allows foster parents and licensed child placing agencies to put normalcy into action.

Fifth, S.B. 1407 ensures that courts, at each child's permanency hearing or placement review, will have the opportunity to question the child or youth as to the extent of opportunities to engage in age-appropriate normalcy activities.

Finally, S.B. 1407 requires DFPS caseworkers and child care licensing employees, licensed child placing agencies, and foster parents or caregivers to attend normalcy training. Training will

include, but is not limited to, "decisionmaking using the standard of care of a reasonable and prudent parent, and the importance of a child's participation in normalcy activities and the benefits of participation to a child's social, emotional, and developmental growth, well-being, and mental health."

S.B. 1407 amends current law relating to encouraging age-appropriate normalcy activities for children in the managing conservatorship of the state.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 263.001(a), Family Code, by amending Subdivision (1-a) and adding Subdivision (1-b), as follows:

(1-a) Defines "age appropriate normalcy activity."

(1-b) Creates this section from existing Subdivision (1-a) and makes no further change.

SECTION 2. Amends Section 263.306, Family Code, by adding Subsection (c) to require the court, in addition to the requirements of Subsection (a) (requiring the court to perform certain functions at each permanency hearing), at each permanency hearing, to review the Department of Family and Protective Services' (DFPS) efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan.

SECTION 3. Amends Section 263.503, Family Code, by adding Subsection (c) to require the court, in addition to the requirements of Subsection (a) (requiring the court make certain determinations regarding the child at each placement review hearing), at each placement review hearing, to review DFPS's efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan.

SECTION 4. Amends Section 264.001, Family Code, by amending Subdivision (1) and adding Subdivisions (1-a) and (5), as follows:

(1) Defines "age-appropriate normalcy activity."

(1-a) Creates this subdivision from existing Subdivision (1) and makes no further change to this subdivision.

(5) Defines "standard of care of a reasonable and prudent parent."

SECTION 5. Amends the heading to Section 264.114, Family Code, to read as follows:

Sec. 264.114. IMMUNITY FROM LIABILITY; ADVERSE DEPARTMENTAL ACTION PROHIBITED.

SECTION 6. Amends Section 264.114, Family Code, by adding Subsections (c) and (d), as follows:

(c) Provides that a foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed child placing agency caring for a child in the managing conservatorship of DFPS is not liable for harm caused to the child resulting from the child's participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child's participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent.

(d) Provides that a licensed child placing agency is not subject to adverse action by DFPS, including contractual action or licensing or other regulatory action, arising out of the conduct of a foster parent who has exercised the standard of care of a reasonable and prudent parent.

SECTION 7. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.125, as follows:

Sec. 264.125. AGE-APPROPRIATE NORMALCY ACTIVITIES; STANDARD OF CARE. (a) Requires DFPS to use its best efforts to normalize the lives of children in the managing conservatorship of DFPS by allowing substitute caregivers, without DFPS's prior approval, to make decisions similar to those a parent would be entitled to make regarding a child's participation in age-appropriate normalcy activities.

(b) Requires a substitute caregiver to exercise the standard of care of a reasonable and prudent parent in determining whether to allow a child in the managing conservatorship of DFPS to participate in an activity.

(c) Requires DFPS to adopt and implement policies consistent with this section promoting a substitute caregiver's ability to make decisions described by Subsection (a). Requires DFPS to identify and review any departmental policy or procedure that may impede a substitute caregiver's ability to make such decisions.

(d) Requires DFPS to require licensed child placing agency personnel, residential child care licensing staff, conservatorship caseworkers, and other persons as may be determined by DFPS to complete a course of training regarding:

(1) the importance of a child's participation in age-appropriate normalcy activities and the benefits of such activities to a child's well-being, mental health, and social, emotional, and developmental growth; and

(2) substitute caregiver decision-making under the standard of care of a reasonable and prudent parent.

SECTION 8. Makes application of Sections 263.306 and 263.503, Family Code, prospective in regard to a permanency hearing or a placement review hearing.

SECTION 9. Effective date: September 1, 2015.