86R23428 MCK-D

By:  Sanford, Noble H.B. No. 3390

Substitute the following for H.B. No. 3390:

By:  Frank C.S.H.B. No. 3390

A BILL TO BE ENTITLED

AN ACT

relating to identifying relative and other designated caregivers for children in the conservatorship of the Department of Family and Protective Services.

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

SECTION 1.  Section 107.002(b), Family Code, is amended to read as follows:

(b)  A guardian ad litem appointed for the child under this chapter shall:

(1)  within a reasonable time after the appointment, interview:

(A)  the child in a developmentally appropriate manner, if the child is four years of age or older;

(B)  each person who has significant knowledge of the child's history and condition, including educators, child welfare service providers, and any foster parent of the child; and

(C)  the parties to the suit;

(2)  seek to elicit in a developmentally appropriate manner the child's expressed objectives;

(3)  consider the child's expressed objectives without being bound by those objectives;

(4)  encourage settlement and the use of alternative forms of dispute resolution; [~~and~~]

(5)  perform any specific task directed by the court; and

(6)  seek to elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child and immediately provide the names of those individuals to the Department of Family and Protective Services.

SECTION 2.  Section 107.003(a), Family Code, is amended to read as follows:

(a)  An attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court:

(1)  shall:

(A)  subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

(i)  the child in a developmentally appropriate manner, if the child is four years of age or older;

(ii)  each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and

(iii)  the parties to the suit;

(B)  seek to elicit in a developmentally appropriate manner  the child's expressed objectives of representation;

(C)  consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court;

(D)  investigate the facts of the case to the extent the attorney considers appropriate;

(E)  obtain and review copies of relevant records relating to the child as provided by Section 107.006;

(F)  participate in the conduct of the litigation to the same extent as an attorney for a party;

(G)  take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings;

(H)  encourage settlement and the use of alternative forms of dispute resolution; [~~and~~]

(I)  review and sign, or decline to sign, a proposed or agreed order affecting the child; and

(J)  seek to elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child and immediately provide the names of those individuals to the Department of Family and Protective Services;

(2)  must be trained in child advocacy or have experience determined by the court to be equivalent to that training; and

(3)  is entitled to:

(A)  request clarification from the court if the role of the attorney is ambiguous;

(B)  request a hearing or trial on the merits;

(C)  consent or refuse to consent to an interview of the child by another attorney;

(D)  receive a copy of each pleading or other paper filed with the court;

(E)  receive notice of each hearing in the suit;

(F)  participate in any case staffing concerning the child conducted by the Department of Family and Protective Services; and

(G)  attend all legal proceedings in the suit.

SECTION 3.  The heading to Section 261.307, Family Code, is amended to read as follows:

Sec. 261.307.  INFORMATION RELATING TO INVESTIGATION PROCEDURE AND CHILD PLACEMENT RESOURCES.

SECTION 4.  Section 261.307(a), Family Code, is amended to read as follows:

(a)  As soon as possible after initiating an investigation of a parent or other person having legal custody of a child, the department shall provide to the person:

(1)  a summary that:

(A)  is brief and easily understood;

(B)  is written in a language that the person understands, or if the person is illiterate, is read to the person in a language that the person understands; and

(C)  contains the following information:

(i)  the department's procedures for conducting an investigation of alleged child abuse or neglect, including:

(a)  a description of the circumstances under which the department would request to remove the child from the home through the judicial system; and

(b)  an explanation that the law requires the department to refer all reports of alleged child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

(ii)  the person's right to file a complaint with the department or to request a review of the findings made by the department in the investigation;

(iii)  the person's right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation or the child's safety;

(iv)  the person's right to seek legal counsel;

(v)  references to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions; and

(vi)  the process the person may use to acquire access to the child if the child is removed from the home;

(2)  if the department determines that removal of the child may be warranted, a proposed child placement resources form that:

(A)  instructs the parent or other person having legal custody of the child to:

(i)  complete and return the form to the department or agency; [~~and~~]

(ii)  identify in the form at least three individuals who could be relative caregivers or designated caregivers, as those terms are defined by Section 264.751; [~~and~~]

(iii)  ask the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative caregiver or designated caregiver for the child; and

(iv)  list on the form the name of each individual identified by the child as a potential relative caregiver or designated caregiver; and

(B)  informs the parent or other person of a location that is available to the parent or other person to submit the information in the form 24 hours a day either in person or by facsimile machine or e-mail; and

(3)  an informational manual required by Section 261.3071.

SECTION 5.  Section 262.0022, Family Code, is amended to read as follows:

Sec. 262.0022.  REVIEW OF PLACEMENT; FINDINGS.  At each hearing under this chapter, the court shall review the placement of each child in the temporary or permanent managing conservatorship of the Department of Family and Protective Services who is not placed with a relative caregiver or designated caregiver as defined by Section 264.751. The court shall include in its findings a statement on whether the department:

(1)  asked the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative caregiver or designated caregiver for the child; and

(2)  has the option of placing the child with a relative caregiver or [~~other~~] designated caregiver.

SECTION 6.  Sections 262.114(a), (a-2), and (b), Family Code, are amended to read as follows:

(a)  Before a full adversary hearing under Subchapter C, the Department of Family and Protective Services must perform a background and criminal history check of the relatives or other designated individuals identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307, including any adult identified by the child.  The department shall evaluate each person listed on the form to determine the relative or other designated individual who would be the most appropriate substitute caregiver for the child and must complete a home study of the most appropriate substitute caregiver, if any, before the full adversary hearing. Until the department identifies a relative or other designated individual qualified to be a substitute caregiver, the department must continue to explore substitute caregiver options, including asking the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child.  The time frames in this subsection do not apply to a relative or other designated individual located in another state.

(a-2)  If the child has not been placed with a relative or other designated caregiver by the time of the full adversary hearing under Section 262.201, the department shall file with the court a statement that explains:

(1)  the reasons why the department has not placed the child with a relative or other designated caregiver listed on the proposed child placement resources form, including any adult identified by the child; and

(2)  the actions the department is taking, if any, to place the child with a relative or other designated caregiver.

(b)  The department may place a child with a relative or other designated caregiver identified on the proposed child placement resources form, including any adult identified by the child, if the department determines that the placement is in the best interest of the child.  The department must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver's home before the child is placed with the relative or other designated caregiver. The department may place the child with the relative or designated caregiver before conducting the home study required under Subsection (a).  Not later than 48 hours after the time that the child is placed with the relative or other designated caregiver, the department shall begin the home study of the relative or other designated caregiver.  The department shall complete the home study as soon as possible unless otherwise ordered by a court.  The department shall provide a copy of an informational manual required under Section 261.3071 to the relative or other designated caregiver at the time of the child's placement.

SECTION 7.  Section 262.201, Family Code, is amended by adding Subsection (l-1) to read as follows:

(l-1)  The court shall ask all parties present at the full adversary hearing whether:

(1)  the child has had the opportunity, in a developmentally appropriate manner, to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child; and

(2)  each individual identified by the child as a potential relative or designated caregiver is listed on the proposed child placement resources form.

SECTION 8.  Section 263.002(b), Family Code, is amended to read as follows:

(b)  At each permanency hearing under this chapter, the court shall review the placement of each child in the temporary managing conservatorship of the department who is not placed with a relative caregiver or designated caregiver as defined by Section 264.751.  The court shall include in its findings a statement whether the department:

(1)  asked the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child; and

(2)  placed the child with a relative or [~~other~~] designated caregiver.

SECTION 9.  Section 263.202(h), Family Code, is amended to read as follows:

(h)  If a proposed child placement resources form as described by Section 261.307 has not been submitted, the court shall require each parent, alleged father, or other person to whom the department is required to provide a form to submit a completed form. The court shall ask all parties present at the status hearing whether:

(1)  the child has had the opportunity, in a developmentally appropriate manner, to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child; and

(2)  each individual identified by the child as a potential relative or designated caregiver is listed on the proposed child placement resources form.

SECTION 10.  Section 263.306(a-1), Family Code, is amended to read as follows:

(a-1)  At each permanency hearing before a final order is rendered, the court shall:

(1)  identify all persons and parties present at the hearing;

(2)  review the efforts of the department or other agency in:

(A)  locating and requesting service of citation on all persons entitled to service of citation under Section 102.009; and

(B)  obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, [~~or~~] relative of the child, or other adult identified by the child as a potential relative or designated caregiver;

(3)  ask all parties present whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated;

(4)  review the extent of the parties' compliance with temporary orders and the service plan and the extent to which progress has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care;

(5)  review the permanency progress report to determine:

(A)  the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;

(B)  the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;

(C)  the appropriateness of the primary and alternative permanency goals for the child developed in accordance with department rule and whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child;

(D)  whether the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;

(E)  whether the child has been provided the opportunity, in a developmentally appropriate manner, to identify any adults, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child;

(F)  for a child receiving psychotropic medication, whether the child:

(i)  has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child's needs; or

(ii)  has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;

(G) [~~(F)~~]  whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there have been major changes in the child's school performance or there have been serious disciplinary events;

(H) [~~(G)~~]  for a child 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community; and

(I) [~~(H)~~]  for a child whose permanency goal is another planned permanent living arrangement:

(i)  the desired permanency outcome for the child, by asking the child;

(ii)  whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:

(a)  return home;

(b)  be placed for adoption;

(c)  be placed with a legal guardian; or

(d)  be placed with a fit and willing relative;

(iii)  whether the department has conducted an independent living skills assessment under Section 264.121(a-3);

(iv)  whether the department has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;

(v)  if the youth is 16 years of age or older, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e); and

(vi)  if the youth is 18 years of age or older or has had the disabilities of minority removed, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e-1);

(6)  determine whether to return the child to the child's parents if the child's parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(7)  estimate a likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in permanent managing conservatorship; and

(8)  announce in open court the dismissal date and the date of any upcoming hearings.

SECTION 11.  Section 263.5031, Family Code, is amended to read as follows:

Sec. 263.5031.  PERMANENCY HEARINGS FOLLOWING FINAL ORDER. At each permanency hearing after the court renders a final order, the court shall:

(1)  identify all persons and parties present at the hearing;

(2)  review the efforts of the department or other agency in notifying persons entitled to notice under Section 263.0021; and

(3)  review the permanency progress report to determine:

(A)  the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;

(B)  whether the child has been provided the opportunity, in a developmentally appropriate manner, to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child;

(C)  whether the department placed the child with a relative or [~~other~~] designated caregiver and the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;

(D) [~~(C)~~]  if the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive environment consistent with the child's best interest and special needs;

(E) [~~(D)~~]  the appropriateness of the primary and alternative permanency goals for the child, whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:

(i)  the department has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or

(ii)  another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;

(F) [~~(E)~~]  for a child whose permanency goal is another planned permanent living arrangement:

(i)  the desired permanency outcome for the child, by asking the child;

(ii)  whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:

(a)  return home;

(b)  be placed for adoption;

(c)  be placed with a legal guardian; or

(d)  be placed with a fit and willing relative;

(iii)  whether the department has conducted an independent living skills assessment under Section 264.121(a-3);

(iv)  whether the department has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;

(v)  if the youth is 16 years of age or older, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e); and

(vi)  if the youth is 18 years of age or older or has had the disabilities of minority removed, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e-1);

(G) [~~(F)~~]  if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community;

(H) [~~(G)~~]  whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;

(I) [~~(H)~~]  for a child receiving psychotropic medication, whether the child:

(i)  has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child's needs; or

(ii)  has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;

(J) [~~(I)~~]  whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events;

(K) [~~(J)~~]  for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, whether to order the department to provide services to a parent for not more than six months after the date of the permanency hearing if:

(i)  the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and

(ii)  the court determines that further efforts at reunification with a parent are:

(a)  in the best interest of the child; and

(b)  likely to result in the child's safe return to the child's parent; and

(L) [~~(K)~~]  whether the department has identified a family or other caring adult who has made a permanent commitment to the child.

SECTION 12.  Section 264.751(1), Family Code, is amended to read as follows:

(1)  "Designated caregiver" means an individual who has a longstanding and significant relationship with a child or the family of a child for whom the department has been appointed managing conservator and who:

(A)  is appointed to provide substitute care for the child, but is not verified by a licensed child-placing agency to operate an agency foster home under Chapter 42, Human Resources Code; or

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

SECTION 13.  As soon as practicable after the effective date of this Act, the commissioner of the Department of Family and Protective Services shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 14.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.