

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;

1 and

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

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

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

11 (1) shall:

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

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

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

20 (iii) the parties to the suit;

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

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

27 (D) investigate the facts of the case to the

1 extent the attorney considers appropriate;

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

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

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

9 (H) encourage settlement and the use of
10 alternative forms of dispute resolution; ~~and~~

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

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

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

22 (3) is entitled to:

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

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

26 (C) consent or refuse to consent to an interview
27 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

1 the child from the home through the judicial system; and

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

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

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

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

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

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

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

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

24 (i) complete and return the form to the
25 department or agency; ~~and~~

26 (ii) identify in the form at least three
27 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

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

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

5 (a) Before a full adversary hearing under Subchapter C, the
6 Department of Family and Protective Services must perform a
7 background and criminal history check of the relatives or other
8 designated individuals identified as a potential relative or
9 designated caregiver, as defined by Section 264.751, on the
10 proposed child placement resources form provided under Section
11 261.307, including any adult identified by the child. The
12 department shall evaluate each person listed on the form to
13 determine the relative or other designated individual who would be
14 the most appropriate substitute caregiver for the child and must
15 complete a home study of the most appropriate substitute caregiver,
16 if any, before the full adversary hearing. Until the department
17 identifies a relative or other designated individual qualified to
18 be a substitute caregiver, the department must continue to explore
19 substitute caregiver options, including asking the child in a
20 developmentally appropriate manner to identify any adult,
21 particularly an adult residing in the child's community, who could
22 be a relative or designated caregiver for the child. The time
23 frames in this subsection do not apply to a relative or other
24 designated individual located in another state.

25 (a-2) If the child has not been placed with a relative or
26 other designated caregiver by the time of the full adversary
27 hearing under Section 262.201, the department shall file with the

1 court a statement that explains:

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

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

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

27 SECTION 7. Section 262.201, Family Code, is amended by

adding Subsection (1-1) to read as follows:

(1-1) 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;

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

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

8 (5) review the permanency progress report to
9 determine:

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

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

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

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

25 (E) whether the child has been provided the
26 opportunity, in a developmentally appropriate manner, to identify
27 any adults, particularly an adult residing in the child's

1 community, who could be a relative or designated caregiver for the
2 child;

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

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

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

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

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

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

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

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

- 1 (a) return home;
- 2 (b) be placed for adoption;
- 3 (c) be placed with a legal guardian;
- 4 or
- 5 (d) be placed with a fit and willing
- 6 relative;
- 7 (iii) whether the department has conducted
- 8 an independent living skills assessment under Section
- 9 [264.121\(a-3\)](#);
- 10 (iv) whether the department has addressed
- 11 the goals identified in the child's permanency plan, including the
- 12 child's housing plan, and the results of the independent living
- 13 skills assessment;
- 14 (v) if the youth is 16 years of age or
- 15 older, whether there is evidence that the department has provided
- 16 the youth with the documents and information listed in Section
- 17 [264.121\(e\)](#); and
- 18 (vi) if the youth is 18 years of age or
- 19 older or has had the disabilities of minority removed, whether
- 20 there is evidence that the department has provided the youth with
- 21 the documents and information listed in Section [264.121\(e-1\)](#);
- 22 (6) determine whether to return the child to the
- 23 child's parents if the child's parents are willing and able to
- 24 provide the child with a safe environment and the return of the
- 25 child is in the child's best interest;
- 26 (7) estimate a likely date by which the child may be
- 27 returned to and safely maintained in the child's home, placed for

1 adoption, or placed in permanent managing conservatorship; and

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

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

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

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

11 (2) review the efforts of the department or other
12 agency in notifying persons entitled to notice under Section
13 263.0021; and

14 (3) review the permanency progress report to
15 determine:

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

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

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

1 interest of the child;

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

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

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

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

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

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

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

26 (a) return home;

27 (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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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