By:  Frank, et al. (Senate Sponsor - Kolkhorst) H.B. No. 3041

(In the Senate - Received from the House April 28, 2021; May 4, 2021, read first time and referred to Committee on Health & Human Services; May 14, 2021, reported favorably by the following vote: Yeas 9, Nays 0; May 14, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Buckingham        X

Campbell          X

Hall              X

Miles             X

Powell            X

Seliger           X

A BILL TO BE ENTITLED

AN ACT

relating to the provision of certain services by the Department of Family and Protective Services as an alternative to removing a child and certain procedures with respect to children in the managing conservatorship of the department.

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

SECTION 1.  Section 262.1095, Family Code, is amended by amending Subsections (a) and (b) and adding Subsection (d-1) to read as follows:

(a)  When the Department of Family and Protective Services or another agency takes possession of a child under this chapter, the department:

(1)  shall provide information as prescribed by this section in writing to each adult the department is able to identify and locate who is:

(A)  related to the child within the third degree by consanguinity as determined under Chapter 573, Government Code;

(B)  an adult relative of the alleged father of the child if the department has a reasonable basis to believe the alleged father is the child's biological father; or

(C)  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; and

(2)  may provide information as prescribed by this section to each adult the department is able to identify and locate who has a long-standing and significant relationship with the child.

(b)  The information provided under Subsection (a) must:

(1)  state that the child has been removed from the child's home and is in the temporary managing conservatorship of the department;

(2)  explain the options available to the individual to participate in the care and placement of the child and the support of the child's family, the methods by which the individual may exercise those options, and any requirements the individual must satisfy to exercise those options, including:

(A)  the requirement that the individual be evaluated by the Department of Family and Protective Services under Section 262.114 before the individual may serve as a substitute caregiver; and

(B)  the deadlines before which the individual must respond to exercise those options;

(3)  identify the [~~state that some~~] options available to the individual that may be lost if the individual fails to respond in a timely manner; [~~and~~]

(4)  include, if applicable, the date, time, and location of the hearing under Subchapter C, Chapter 263; and

(5)  include information regarding the procedures and timeline for a suit affecting the parent-child relationship under this chapter.

(d-1)  Immediately after the Department of Family and Protective Services identifies and locates an individual described by Subsection (a)(1), the department shall provide the information required by this section.

SECTION 2.  Chapter 262, Family Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. FAMILY PRESERVATION SERVICES PILOT PROGRAM

Sec. 262.401.  DEFINITIONS. In this subchapter:

(1)  "Child who is a candidate for foster care" means a child who is at imminent risk of being removed from the child's home and placed into the conservatorship of the department because of a continuing danger to the child's physical health or safety caused by an act or failure to act of a person entitled to possession of the child but for whom a court of competent jurisdiction has issued an order allowing the child to remain safely in the child's home or in a kinship placement with the provision of family preservation services.

(2)  "Department" means the Department of Family and Protective Services.

(3)  "Family preservation service" means a time-limited, family-focused service, including a service subject to the Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123), provided to the family of a child who is:

(A)  a candidate for foster care to prevent or eliminate the need to remove the child and to allow the child to remain safely with the child's family; or

(B)  a pregnant or parenting foster youth.

(4)  "Family preservation services plan" means a written plan, based on a professional assessment, listing the family preservation services, including services subject to the Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123), to be provided to the family of a child who is:

(A)  a candidate for foster care; or

(B)  a pregnant or parenting foster youth.

(5)  "Foster care" means substitute care as defined by Section 263.001.

Sec. 262.402.  PILOT PROGRAM FOR FAMILY PRESERVATION SERVICES. (a) The department shall establish a pilot program that allows the department to dispose of an investigation by referring the family of a child who is a candidate for foster care for family preservation services and allowing the child to return home instead of entering foster care or by providing services to a pregnant or parenting foster youth. The department shall implement the pilot program in two child protective services regions in this state, one urban and one rural.

(b)  The pilot program must be implemented in at least one child protective services region in this state in which community-based care has been implemented under Subchapter B-1, Chapter 264.

(c)  In authorizing family preservation services for a child who is a candidate for foster care, the child's safety is the primary concern. The services may be modified as necessary to accommodate the child's circumstances.

(d)  In implementing the pilot program, the department shall use:

(1)  Title IV-E funds to:

(A)  pay for legal representation for parents in the manner provided by Section 107.015; or

(B)  provide to counties a matching reimbursement for the cost of the legal representation; and

(2)  funds received under the Temporary Assistance for Needy Families (TANF) program or other department funds to provide enhanced in-home support services to families qualifying for prevention services under this subchapter to achieve the objectives in the family preservation services plan.

Sec. 262.403.  COURT ORDER REQUIRED. (a) Subject to Subsection (b), the department must obtain a court order from a court of competent jurisdiction to compel the family of a child who is a candidate for foster care to obtain family preservation services and complete the family preservation services plan.

(b)  The department is not required to obtain a court order to provide family preservation services to a pregnant or parenting foster youth.

Sec. 262.404.  FILING SUIT; PETITION REQUIREMENTS. (a) The department may file a suit requesting the court to render an order requiring the parent, managing conservator, guardian, or other member of the child's household to:

(1)  participate in the family preservation services for which the department makes a referral or services the department provides or purchases to:

(A)  alleviate the effects of the abuse or neglect that has occurred;

(B)  reduce a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household; or

(C)  reduce a substantial risk of abuse or neglect caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household;

(2)  permit the child and any siblings of the child to receive the services; and

(3)  complete all actions and services required under the family preservation services plan.

(b)  A suit requesting an order under this section may be filed in a court with jurisdiction to hear the suit in the county in which the child is located.

(c)  Except as otherwise provided by this subchapter, the suit is governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit.

(d)  The petition for suit must be supported by:

(1)  a sworn affidavit based on personal knowledge and stating facts sufficient to support a finding that:

(A)  the child has been a victim of abuse or neglect or is at substantial risk of abuse or neglect; and

(B)  there is a continuing danger to the child's physical health or safety caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household unless that person participates in family preservation services requested by the department; and

(2)  a safety risk assessment for the child that documents:

(A)  the process for the child to remain at home with appropriate family preservation services instead of foster care;

(B)  the specific reasons the department should provide family preservation services to the family; and

(C)  the manner in which family preservation services will mitigate the risk of the child entering foster care.

(e)  In a suit filed under this section, the court may render a temporary restraining order as provided by Section 105.001.

(f)  The court shall hold a hearing on the petition not later than the 14th day after the date the petition is filed unless the court finds good cause for extending that date for not more than 14 days.

Sec. 262.405.  AD LITEM APPOINTMENTS. (a) The court shall appoint an attorney ad litem to represent the interests of the child immediately after a suit is filed under Section 262.404 but before the hearing to ensure adequate representation of the child. The attorney ad litem for the child has the powers and duties of an attorney ad litem for a child under Chapter 107.

(b)  The court shall appoint an attorney ad litem to represent the interests of a parent for whom participation in family preservation services is being requested immediately after the suit is filed but before the hearing to ensure adequate representation of the parent. The attorney ad litem for the parent has the powers and duties of an attorney ad litem for a parent under Section 107.0131.

(c)  Before the hearing commences, the court shall inform each parent of:

(1)  the parent's right to be represented by an attorney; and

(2)  for a parent who is indigent and appears in opposition to the motion, the parent's right to a court-appointed attorney.

(d)  If a parent claims indigence, the court shall require the parent to complete and file with the court an affidavit of indigence. The court may consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the court finds the parent is indigent, the attorney ad litem appointed to represent the interests of the parent may continue the representation. If the court finds the parent is not indigent, the court shall discharge the attorney ad litem from the appointment after the hearing and order the parent to pay the cost of the attorney ad litem's representation.

(e)  The court may, for good cause shown, postpone any subsequent proceedings for not more than seven days after the date of the attorney ad litem's discharge to allow the parent to hire an attorney or to provide the parent's attorney time to prepare for the subsequent proceeding.

Sec. 262.406.  COURT ORDER. (a) Except as provided by Subsection (d), at the conclusion of the hearing in a suit filed under Section 262.404, the court shall order the department to provide family preservation services and to execute a family preservation services plan developed in collaboration with the family of the child who is a candidate for foster care if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1)  abuse or neglect occurred or there is a substantial risk of abuse or neglect or continuing danger to the child's physical health or safety caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household;

(2)  family preservation services are necessary to ensure the child's physical health or safety; and

(3)  family preservation services are appropriate based on the child's safety risk assessment and the child's family assessment.

(b)  The court's order for family preservation services must:

(1)  identify and require specific services narrowly tailored to address the factors that make the child a candidate for foster care; and

(2)  include a statement on whether the services to be provided to the family are appropriate to address the factors that place the child at risk of removal.

(c)  The court may, in its discretion, order family preservation services for a parent whose parental rights to another child were previously terminated.

(d)  If the court finds, by clear and convincing evidence, that the parent has subjected the child to aggravated circumstances described by Section 262.2015, the court may order that family preservation services not be provided.

Sec. 262.407.  FAMILY PRESERVATION SERVICES PLAN; CONTENTS. (a) On order of the court under Section 262.406, the department in consultation with the child's family shall develop a family preservation services plan. The department and the family shall discuss each term and condition of the plan.

(b)  The family preservation services plan must be written in a manner that is clear and understandable to the parent, managing conservator, guardian, or other member of the child's household and in a language the person understands.

(c)  The family preservation services plan must:

(1)  include a safety risk assessment of the child who is the subject of the investigation and an assessment of the child's family;

(2)  state the reasons the department is involved with the family;

(3)  be narrowly tailored to address the specific reasons the department is involved with the family and the factors that make the child a candidate for foster care;

(4)  list the specific family preservation services the family will receive under the plan and identify the manner in which those services will mitigate the child's specific risk factors and allow the child to remain safely at home;

(5)  specify the tasks the family must complete during the effective period of the plan and include a schedule with appropriate completion dates for those tasks; and

(6)  include the name of the department or single source continuum contractor representative who will serve as a contact for the family in obtaining information related to the plan.

(d)  The family preservation services plan must include the following statement:

"TO THE PARENT OF THE CHILD SERVED BY THIS PLAN: THIS DOCUMENT IS VERY IMPORTANT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT WITHIN THE REASONABLE PERIOD SPECIFIED IN THIS PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT, YOUR CHILD MAY BE REMOVED FROM YOU, AND YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS MAY BE RESTRICTED OR TERMINATED. A COURT HEARING WILL BE HELD AT WHICH A JUDGE WILL REVIEW THIS FAMILY PRESERVATION SERVICES PLAN."

Sec. 262.408.  FAMILY PRESERVATION SERVICES PLAN: SIGNING AND EFFECT. (a) The family of a child who is a candidate for foster care and the department shall sign the family preservation services plan, and the department shall submit a copy of the signed plan to the court for review.

(b)  If the family is unwilling to participate in the development of the family preservation services plan, the department may submit the plan to the court without the parents' signatures.

(c)  The family preservation services plan takes effect on the date the court certifies that the plan complies with the court's order for family preservation services and is narrowly tailored to address the factors that make the child a candidate for foster care. The court may hold a hearing to review the plan for compliance.

(d)  The family preservation services plan remains in effect until:

(1)  the 180th day after the date the court's order for family preservation services is signed, unless renewed by an order of the court; or

(2)  the date the plan is amended or revoked by the court.

(e)  A person subject to the family preservation services plan may file a motion with the court at any time to request a modification or revocation of the original or any amended plan.

Sec. 262.409.  AMENDED FAMILY PRESERVATION SERVICES PLAN. (a) A family preservation services plan may be amended at any time. The department or single source continuum contractor and the parents of a child who is a candidate for foster care shall jointly develop any amendment to the plan. The department or contractor must inform the parents of their rights related to the amended family preservation services plan process.

(b)  The parents and the person preparing the amended family preservation services plan shall sign the amended plan, and the department or single source continuum contractor shall submit the amended plan to the court for review.

(c)  If the parents are unwilling to participate in the development of the amended family preservation services plan, the department or single source continuum contractor may submit the amended plan to the court without the parents' signatures.

(d)  The amended family preservation services plan takes effect on the date the court certifies that the amended plan complies with the court's order for family preservation services and is narrowly tailored to address the factors that make the child a candidate for foster care. The court may hold a hearing to review the amended plan for compliance.

(e)  The amended family preservation services plan is in effect until:

(1)  the 180th day after the date the court's order for family preservation services is signed, unless renewed by an order of the court; or

(2)  the date the amended plan is modified or revoked by the court.

Sec. 262.410.  COURT IMPLEMENTATION OF FAMILY PRESERVATION SERVICES PLAN. (a) After reviewing and certifying an original or any amended family preservation services plan, the court shall incorporate the original and any amended plan into the court's order and may render additional appropriate orders to implement or require compliance with an original or amended plan.

(b)  In rendering an order, a court may omit any service prescribed under the family preservation services plan that the court finds is not appropriate or is not narrowly tailored to address the factors that make the child a candidate for foster care and place the child at risk of removal.

Sec. 262.411.  SELECTION OF SERVICE PROVIDER. (a) A parent, managing conservator, guardian, or other member of a household ordered to participate in family preservation services under this subchapter may obtain those services from a qualified or licensed provider selected by the person.

(b)  Services provided by a provider selected under Subsection (a) must be similar in scope and duration to services described by the family preservation services plan adopted under Section 262.407 and achieve the stated goals of the service plan. The service provider must certify in writing that the parent, managing conservator, guardian, or other member of a household completed the services.

(c)  A parent, managing conservator, guardian, or other member of a household who obtains family preservation services from a provider selected by the person is responsible for the cost of those services.

(d)  A parent, managing conservator, guardian, or other member of a household who successfully completes the required family preservation services must obtain verification from the service provider of that completion. The department shall accept the service provider's verification provided under this subsection as proof that the person successfully completed the court-ordered family preservation services.

Sec. 262.412.  STATUS HEARING. Not later than the 90th day after the date the court renders an order for family preservation services under this subchapter, the court shall hold a hearing to review the status of each person required to participate in the services and of the child and to review the services provided, purchased, or referred. The court shall set subsequent review hearings every 90 days to review the continued need for the order.

Sec. 262.413.  EXTENSION OF ORDER. (a) The court may extend an order for family preservation services rendered under this subchapter on a showing by the department of a continuing need for the order, after notice and hearing. Except as provided by Subsection (b), the court may extend the order only one time for not more than 180 days.

(b)  The court may extend an order rendered under this subchapter for not more than an additional 180 days only if:

(1)  the court finds that:

(A)  the extension is necessary to allow the person required to participate in family preservation services under the family preservation services plan time to complete those services;

(B)  the department made a good faith effort to timely provide the services to the person;

(C)  the person made a good faith effort to complete the services; and

(D)  the completion of the services is necessary to ensure the physical health and safety of the child; and

(2)  the extension is requested by the person required to participate in family preservation services under the family preservation services plan or the person's attorney.

Sec. 262.414.  EXPIRATION OF ORDER. On expiration of a court order for family preservation services under this subchapter, the court shall dismiss the case.

Sec. 262.415.  CONTRACT FOR SERVICES. (a) The department may contract with one or more persons to provide family preservation services under the pilot program. In a child protective services region in this state in which community-based care under Subchapter B-1, Chapter 264, has been implemented and in which the pilot program is implemented, the department may contract with the single source continuum contractor to provide family preservation services under the pilot program.

(b)  The contract with the person selected to provide family preservation services must include performance-based measures that require the person to show that as a result of the services:

(1)  fewer children enter foster care in the pilot program region in comparison to other regions of this state;

(2)  fewer children are removed from their families after receiving the services in the pilot program region in comparison to other regions of this state; and

(3)  fewer children enter foster care in the five years following completion of the services in the pilot program region in comparison to other regions of this state.

(c)  The department shall collaborate with a person selected to provide family preservation services to identify children who are candidates for foster care or who are pregnant or parenting foster youth and to ensure that the services are appropriate for children referred by the department.

Sec. 262.416.  LIMIT ON FINANCE OF SERVICES. If a court order for services under this subchapter includes services that are not subject to the Family First Prevention Services Act (Title VII, Div. E., Pub. L. No. 115-123), the order must identify a method of financing for the services and the local jurisdiction that will pay for the services.

Sec. 262.417.  REPORT TO LEGISLATURE. (a) Not later than the first anniversary of the date the department commences a pilot program under this subchapter and every two years after that date, the department shall contract with an entity based in this state that is independent of the department and has demonstrated expertise in statistical, financial, logistical, and operational analysis to evaluate the implementation of the pilot program under this subchapter, assess its progress, and report its findings to the appropriate standing committees of the legislature having jurisdiction over child protective services and foster care matters. The report must include:

(1)  a detailed description of the actions taken by the department to ensure the successful implementation of the pilot program;

(2)  a detailed analysis of the role each of the following entities has in the pilot program:

(A)  the courts;

(B)  legal representatives;

(C)  the investigations division of the department; and

(D)  the department or other entity implementing the pilot program;

(3)  an analysis of any barrier to the successful implementation of the pilot program and recommendations for overcoming those barriers;

(4)  data on the performance-based outcomes described by Subsection (b) and achieved in the child protective services region in which the pilot program is implemented;

(5)  a detailed comparison of outcomes achieved in the child protective services region in which the pilot program is implemented with outcomes achieved in other child protective services regions;

(6)  a detailed description of the costs of the pilot program and services provided; and

(7)  recommendations on whether to expand services described in this subchapter to other child protective services regions in this state based on the outcomes and performance of the pilot program.

(b)  Performance-based outcomes for evaluating the pilot program must include:

(1)  the number of children served;

(2)  the number of families served;

(3)  the percentage of children who do not have a reported finding of abuse, neglect, or exploitation;

(4)  the percentage of children served who did not enter foster care at case closure;

(5)  the percentage of children served who did not enter foster care within six months and one year of the date the case was closed;

(6)  the number of families who received family preservation services under the pilot program for whom the department opens an investigation of abuse or neglect involving the family before the second anniversary of the date the case was closed; and

(7)  the average length of time services are provided from the entry of an order for family preservation services to case dismissal.

SECTION 3.  Section 263.202(b), Family Code, is amended to read as follows:

(b)  Except as otherwise provided by this subchapter, a status hearing shall be limited to matters related to the contents and execution of the service plan filed with the court. The court shall review the service plan that the department filed under this chapter for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

(1)  a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child;

(2)  the child's parents have reviewed and understand the plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents;

(3)  the plan is narrowly [~~reasonably~~] tailored to address any specific issues identified by the department; and

(4)  the child's parents and the representative of the department have signed the plan.

SECTION 4.  Subchapter C, Chapter 264, Family Code, is amended by adding Section 264.2031 to read as follows:

Sec. 264.2031.  SELECTION OF SERVICE PROVIDER. (a) A parent, managing conservator, guardian, or other member of a household ordered to participate in services under Section 264.203(a) may obtain those services from a qualified provider selected by the person.

(b)  A parent, managing conservator, guardian, or other member of a household who obtains services from a provider selected by the person is responsible for the cost of those services.

(c)  A parent, managing conservator, guardian, or other member of a household who successfully completes the services ordered under Section 264.203(a) must obtain verification from the service provider of that completion. The department shall accept the service provider's verification provided under this subsection as proof that the person successfully completed the court-ordered services.

SECTION 5.  The changes in law made by this Act to Section 262.1095, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 6.  This Act takes effect September 1, 2021.

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