

By: Frank, Hull

H.B. No. 3041

Substitute the following for H.B. No. 3041:

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C.S.H.B. No. 3041

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the procedures and grounds for taking possession of a  
3 child and authorizing a family preservation services pilot program  
4 as an alternative to removal in suits affecting the parent-child  
5 relationship.

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

7 SECTION 1. Chapter 262, Family Code, is amended by adding  
8 Subchapter F to read as follows:

9 SUBCHAPTER F. FAMILY PRESERVATION SERVICES PILOT PROGRAM

10 Sec. 262.401. DEFINITIONS. In this subchapter:

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

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

22 (3) "Family preservation service" means a  
23 time-limited, family-focused service provided to the family of a  
24 child who is a candidate for foster care or a child who is pregnant

1 or is a parent to prevent or eliminate the need to remove the child  
2 and allow the child to remain safely with the child's family,  
3 including a service subject to the Family First Prevention Services  
4 Act (Title VII, Div. E., Pub. L. No. 115-123).

5 (4) "Family preservation services plan" means a  
6 written plan, based on a professional assessment and subject to the  
7 Family First Prevention Services Act (Title VII, Div. E., Pub. L.  
8 No. 115-123), listing the family preservation services to be  
9 provided to the family of a child who is a candidate for foster  
10 care.

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

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

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

26 (c) In authorizing family preservation services for a child  
27 who is a candidate for foster care or a child who is pregnant or is a

1 parent, the child's safety is the primary concern. The services may  
2 be modified as necessary to accommodate the child's circumstances.

3 (d) In implementing the pilot program, the department shall  
4 establish a process to use:

5 (1) Title IV-E funds to provide legal representation  
6 to families; and

7 (2) funds received under the Temporary Assistance for  
8 Needy Families (TANF) program to provide enhanced in-home support  
9 services under Section 264.2011 to families qualifying for  
10 prevention services under this subchapter.

11 Sec. 262.403. COURT ORDER REQUIRED. The department must  
12 obtain a court order from a court of competent jurisdiction to  
13 compel the family of a child who is a candidate for foster care or a  
14 child who is pregnant or is a parent to obtain family preservation  
15 services and complete the family preservation services plan.

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

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

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

25 (B) reduce a continuing danger to the physical  
26 health or safety of the child caused by an act or failure to act of  
27 the parent, managing conservator, guardian, or other member of the

1 child's household; or

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

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

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

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

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

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

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

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

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

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

27 (A) the process for the child to remain at home

1 with appropriate family preservation services instead of foster  
2 care;

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

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

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

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

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

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

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

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

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

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

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

25           Sec. 262.406. COURT ORDER. (a) Except as provided by  
26 Subsection (d), at the conclusion of the hearing in a suit filed  
27 under Section 262.404, the court shall order the department to

1 provide family preservation services and to execute a family  
2 preservation services plan developed in collaboration with the  
3 family of the child who is a candidate for foster care or a child who  
4 is pregnant or is a parent if the court finds sufficient evidence to  
5 satisfy a person of ordinary prudence and caution that:

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

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

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

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

18 (1) identify and require specific services narrowly  
19 tailored to address the factors that make the child a candidate for  
20 foster care or to address the needs of a child who is pregnant or is  
21 a parent; and

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

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

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

5 Sec. 262.407. FAMILY PRESERVATION SERVICES PLAN; CONTENTS.

6 (a) On order of the court under Section 262.406, the department in  
7 consultation with the child's family shall develop a family  
8 preservation services plan. The department and the family shall  
9 discuss each term and condition of the plan.

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

14 (c) The family preservation services plan must:

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

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

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

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

27 (5) specify the tasks the family must complete during



1 the effective period of the plan and include a schedule with  
2 appropriate completion dates for those tasks; and

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

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

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

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

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

27 (c) The family preservation services plan takes effect on

1 the date the court certifies that the plan complies with the court's  
2 order for family preservation services and is narrowly tailored to  
3 address the factors that make the child a candidate for foster care  
4 or address the needs of a child who is pregnant or is a parent. The  
5 court may hold a hearing to review the plan for compliance.

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

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

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

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

16 Sec. 262.409. AMENDED FAMILY PRESERVATION SERVICES PLAN.

17 (a) A family preservation services plan may be amended at any time.  
18 The department or single source continuum contractor and the  
19 parents of a child who is a candidate for foster care or a child who  
20 is pregnant or is a parent shall jointly develop any amendment to  
21 the plan. The department or contractor must inform the parents of  
22 their rights related to the amended family preservation services  
23 plan process.

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

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

5       (d) The amended family preservation services plan takes  
6 effect on the date the court certifies that the amended plan  
7 complies with the court's order for family preservation services  
8 and is narrowly tailored to address the factors that make the child  
9 a candidate for foster care or address the needs of a child who is  
10 pregnant or is a parent. The court may hold a hearing to review the  
11 amended plan for compliance.

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

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

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

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

25       (b) In rendering an order, a court may omit any service  
26 prescribed under the family preservation services plan that the  
27 court finds is not appropriate or is not narrowly tailored to

1 address the factors that make the child a candidate for foster care  
2 and place the child at risk of removal or address the needs of a  
3 child who is pregnant or is a parent.

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

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

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

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

27 Sec. 262.412. STATUS HEARING. Not later than the 90th day

1 after the date the court renders an order for family preservation  
2 services under this subchapter, the court shall hold a hearing to  
3 review the status of each person required to participate in the  
4 services and of the child and to review the services provided,  
5 purchased, or referred. The court shall set subsequent review  
6 hearings every 90 days to review the continued need for the order.

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

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

15 (1) the court finds that:

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

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

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

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

26 (2) the extension is requested by the person required  
27 to participate in family preservation services under the family

1 preservation services plan or the person's attorney.

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

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

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

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

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

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

24 (c) The department shall collaborate with a person selected  
25 to provide family preservation services to identify children who  
26 are candidates for foster care or who are pregnant or are parents  
27 and to ensure that the services are appropriate for children

1 referred by the department.

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

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

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

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

24 (A) the courts;

25 (B) legal representatives;

26 (C) the investigations division of the  
27 department; and

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

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

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

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

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

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

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

21                    (1) the number of children served;

22                    (2) the number of families served;

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

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

27                    (5) the percentage of children served who did not



1 enter foster care within six months and one year of the date the  
2 case was closed;

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

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

11 SECTION 2. Section 263.202(b), Family Code, is amended to  
12 read as follows:

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

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

23 (2) the child's parents have reviewed and understand  
24 the plan and have been advised that unless the parents are willing  
25 and able to provide the child with a safe environment, even with the  
26 assistance of a service plan, within the reasonable period of time  
27 specified in the plan, the parents' parental and custodial duties

1 and rights may be subject to restriction or to termination under  
2 this code or the child may not be returned to the parents;

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

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

7 SECTION 3. Subchapter C, Chapter 264, Family Code, is  
8 amended by adding Section 264.2031 to read as follows:

9 Sec. 264.2031. SELECTION OF SERVICE PROVIDER. (a) A  
10 parent, managing conservator, guardian, or other member of a  
11 household ordered to participate in services under Section  
12 264.203(a) may obtain those services from a qualified provider  
13 selected by the person.

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

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

24 SECTION 4. This Act takes effect September 1, 2021.