

By: Kolkhorst

S.B. No. 1576

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 service subject to the Family First Prevention
24 Services Act (Title VII, Div. E., Pub. L. No. 115-123) provided to

1 the family of a child who is a candidate for foster care to prevent
2 or eliminate the need to remove the child from and allow the child
3 to remain safely in the child's home.

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

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

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

20 (b) The pilot program may be implemented in only one child
21 protective services region in this state in which community-based
22 care has been implemented under Subchapter B-1, Chapter 264.

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

27 Sec. 262.403. COURT ORDER REQUIRED. The department must

1 obtain a court order to compel the family of a child who is a
2 candidate for foster care to obtain family preservation services
3 and complete the family preservation services plan.

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

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

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

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

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

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

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

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

27 (c) Except as otherwise provided by this subchapter, the

1 suit is governed by the Texas Rules of Civil Procedure applicable to
2 the filing of an original lawsuit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (d) If a parent claims indigence, the court shall require
22 the parent to complete and file with the court an affidavit of
23 indigence. The court may consider additional evidence to determine
24 whether the parent is indigent, including evidence relating to the
25 parent's income, source of income, assets, property ownership,
26 benefits paid in accordance with a federal, state, or local public
27 assistance program, outstanding obligations, and necessary

1 expenses and the number and ages of the parent's dependents. If the
2 court finds the parent is indigent, the attorney ad litem appointed
3 to represent the interests of the parent may continue the
4 representation. If the court finds the parent is not indigent, the
5 court shall discharge the attorney ad litem from the appointment
6 after the hearing and order the parent to pay the cost of the
7 attorney ad litem's representation.

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

13 Sec. 262.406. COURT ORDER. (a) Except as provided by
14 Subsection (d), at the conclusion of the hearing in a suit filed
15 under Section 262.404, the court shall order the department to
16 provide family preservation services and to execute a family
17 preservation services plan developed in collaboration with the
18 family of the child who is a candidate for foster care if the court
19 finds by a preponderance of evidence that:

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

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

27 (3) family preservation services are appropriate

1 based on the child's safety risk assessment and the child's family
2 assessment.

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

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

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

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

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

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

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

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

27 (c) The family preservation services plan must:

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

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

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

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

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

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

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

22 "TO THE PARENT OF THE CHILD SERVED BY THIS PLAN: THIS
23 DOCUMENT IS VERY IMPORTANT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR
24 CHILD WITH A SAFE ENVIRONMENT WITHIN THE REASONABLE PERIOD
25 SPECIFIED IN THIS PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE
26 YOUR CHILD WITH A SAFE ENVIRONMENT, YOUR CHILD MAY BE REMOVED FROM
27 YOU, AND YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS MAY BE

1 RESTRICTED OR TERMINATED. A COURT HEARING WILL BE HELD AT WHICH A
2 JUDGE WILL REVIEW THIS FAMILY PRESERVATION SERVICES PLAN."

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

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

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

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

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

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

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

27 Sec. 262.409. AMENDED FAMILY PRESERVATION SERVICES PLAN.

1 (a) A family preservation services plan may be amended at any time.
2 The department or single source continuum contractor and the
3 parents of a child who is a candidate for foster care shall jointly
4 develop any amendment to the plan. The department or contractor
5 must inform the parents of their rights related to the amended
6 family preservation services plan process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (1) the court finds that:

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

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

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

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

27 (2) the extension is requested by the person required

1 to participate in family preservation services under the family
2 preservation services plan or the person's attorney.

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

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

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

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

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

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

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

1 appropriate for children 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. Not later than the
9 first anniversary of the date the department implements a pilot
10 program under this subchapter and every two years after that date,
11 the department shall report on the progress of the pilot program to
12 the appropriate standing committees of the legislature having
13 jurisdiction over child protective services and foster care
14 matters. The report must include:

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

18 (2) data on performance-based outcomes achieved in the
19 child protective services region in which the pilot program is
20 implemented;

21 (3) a detailed comparison of outcomes achieved in the
22 child protective services region in which the pilot program is
23 implemented with outcomes achieved in other child protective
24 services regions;

25 (4) a detailed description of the costs of the pilot
26 program and services provided; and

27 (5) recommendations on whether to expand services

1 described in this subchapter to other child protective services
2 regions in this state based on the outcomes and performance of the
3 pilot program.

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

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

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

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

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

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

27 SECTION 3. Subchapter C, Chapter 264, Family Code, is

1 amended by adding Section 264.2031 to read as follows:

2 Sec. 264.2031. SELECTION OF SERVICE PROVIDER. (a) A
3 parent, managing conservator, guardian, or other member of a
4 household ordered to participate in services under Section
5 264.203(a) may obtain those services from a qualified provider
6 selected by the person.

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

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

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