By:  Frank H.B. No. 730

A BILL TO BE ENTITLED

AN ACT

relating to procedures and standards for certain investigations and suits affecting the parent child relationship.

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

SECTION 1.  Chapter 105, Family Code, is amended by adding Section 105.010 to read as follows:

Sec. 105.010.  BEST INTEREST OF THE CHILD. In a suit between a parent and a non-parent under this title, it is a rebuttable presumption that it is in a child's best interest to be raised by the child's parents and that a parent's decisions are in the best interest of the child.

SECTION 2.  Section 261.303, Family Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b)  If admission to the home, school, or any place where the child may be cannot be obtained~~, then~~ and ~~for good cause shown~~ the court having family law jurisdiction finds probable cause to believe that admission is necessary to protect the child from abuse or neglect, then the court shall order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance for the interview, examination, and investigation.

(c)  If a parent or person responsible for the child's care does not consent to release of the child's prior medical, psychological, or psychiatric records or to a medical, psychological, or psychiatric examination of the child that is requested by the department~~,~~ and the court having family law jurisdiction finds probable cause to believe that release or examination is necessary to protect the child from abuse or neglect, then the court shall~~, for good cause shown,~~ order the records to be released or the examination to be made at the times and places designated by the court.

(f)  An order described by subsections (b) or (c) may only be issued after notice and a hearing. The hearing may not be ex parte unless the court finds probable cause to believe that there is an immediate risk to the physical health or safety of the child and there is no time, consistent with the physical health or safety of the child, for a full hearing.

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

Sec. 261.307.  INFORMATION RELATING TO INVESTIGATION PROCEDURE AND CHILD PLACEMENT RESOURCES. (a) After [~~As soon as possible after~~] initiating an investigation of a parent or other person having legal custody of a child, the department shall, upon first contact with the person, provide to the person:

(1)  a summary that:

(A)  is brief and easily understood;

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

(C)  contains the following information:

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

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

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

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

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

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

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

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

(vii)  the rights listed under Subdivision (2);

(2)  a verbal notification of the right to:

(A)  not speak with any agent of the department without legal counsel present;

(B)  assistance by an attorney;

(C)  have a court-appointed attorney if the person is indigent;

(D)  record any interaction or interview subject to the understanding that the recording may be disclosed to the department, law enforcement, or another party under a court order;

(E)  refuse to allow the investigator to enter the home or interview the children without legal counsel present;

(F)  withhold consent to the release of any medical or mental health records;

(G)  withhold consent to any medical or psychological examination of the child;

(H)  refuse to submit to a drug test; and

(I)  consult with legal counsel prior to agreeing to any proposed voluntary safety plan;

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

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

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

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

(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

(4) [~~(3)~~]  an informational manual required by Section 261.3071.

(b)  The child placement resources form described by Subsection (a)(3) [~~(a)(2)~~] must include information on the periods of time by which the department must complete a background check.

(c)  The department shall adopt a form for the purpose of verifying that the parent or other person having legal custody of the child received the verbal notification and written summary required by this section.

SECTION 4.  Section 262.206, Family Code, is amended to read as follows:

Sec. 262.206.  EX PARTE HEARINGS ~~PROHIBITED~~. (a) Unless otherwise authorized by this chapter or other law, a hearing held by a court in a suit under this chapter may not be ex parte.

(b)  An ex parte hearing held under this Chapter must be recorded by a court reporter or by audio or video tape recording.

(c)  The record of an ex parte hearing held under this Chapter must be made available to all parties to the suit upon request.

SECTION 5.  Section 263.307, Family Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  The presumption described by Section 105.010 shall be the court's primary consideration.

SECTION 6.  Section 264.902, Family Code, is amended by amending Subsection (a) and adding Subsections (e), (f), and (g) to read as follows:

(a)  A parental child safety placement agreement must include terms that clearly state:

(1)  the respective duties of the person making the placement and the caregiver, including a plan for how the caregiver will access necessary medical treatment for the child and the caregiver's duty to ensure that a school-age child is enrolled in and attending school;

(2)  conditions under which the person placing the child may have access to the child, including how often the person may visit and the circumstances under which the person's visit may occur;

(3)  the duties of the department;

(4)  subject to Subsection (f), the date on which the agreement will terminate unless terminated sooner or extended to a subsequent date as provided under department policy; and

(5)  any other term the department determines necessary for the safety and welfare of the child.

(e)  The department must notify the parent, caregiver, or other person with whom the child resides of their right to consult with an attorney before entering into a parental child safety placement agreement and provide the parent, caregiver, or other person with whom the child resides with a reasonable time in which to do so.

(1)  If the parent or caregiver exercises their right to consult with an attorney, the department may continue to monitor the child to ensure the child's safety.

(2)  If the parent or caregiver waives their right to consult with an attorney prior to entering into the agreement, the agreement shall include language stating that the parent or caregiver waived this right.

(f)  A parental child safety placement agreement automatically terminates on the earlier of the 30th day after the date:

(1)  the agreement is signed; or

(2)  the child is placed with the caregiver.

(g)  On the expiration of a parental child safety placement agreement, the department may for good cause enter into not more than one additional parental child safety placement agreement for the child. On entering the parental child safety placement agreement, the department shall:

(1)  reevaluate the terms and conditions of the original agreement; and

(2)  notify the parents of their right to:

(A)  refuse to enter into the agreement; and

(B)  be represented by an attorney or a court-appointed attorney if the parent is indigent and if the department subsequently seeks a court order to require the parents to participate in services.

SECTION 7.  Subchapter L, Chapter 264, Family Code, is amended by adding Sections 264.907 and 264.908 to read as follows:

Sec. 264.907.  INCLUSIONS IN REPORTS OF PARENTAL CHILD SAFETY PLACEMENTS. The department shall include children who are placed with a caregiver under a parental child safety placement agreement in any report, including reports submitted to the United States Department of Health and Human Services or another federal agency, in which the department is required to report the number of children in the child protective services system who are removed from the children's homes.

Sec. 264.908.  REPORT ON COURT-ORDERED PARTICIPATION IN SERVICES. The department shall report the number of cases in which a court under Section 264.203 orders the parent, managing conservator, guardian, or other member of the child's household of a child who is placed with a caregiver under a parental child safety placement to participate in services.

SECTION 8.  Section 105.010, Family Code, as added by this Act applies only to an order rendered in a suit affecting the parent-child relationship on or after the effective date of this Act. An order rendered in a suit affecting the parent-child relationship before that date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 9.  Section 261.303, Family Code, as amended by this Act applies only to orders in aid of investigation requested on or after the effective date of this Act. An order in aid of investigation requested before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 10.  Section 261.307, Family Code, as amended by this Act applies only to an investigation of a report of child abuse or neglect that is made on or after the effective date of this Act. An investigation of a report of abuse or neglect made before the effective date of this Act is governed by the law in effect on the date the report was made, and the former law is continued in effect for that purpose.

SECTION 11.  Section 262.206, Family Code, as amended by this Act applies only to an ex parte hearing held on or after the effective date of this Act. An ex parte hearing held before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 12.  Section 264.902, Family Code, as amended by this Act and Sections 264.907 and 264.908, Family Code, as added by this Act apply only to parental child safety placement agreements executed on or before the effective date of this Act. Parental child safety placement agreements executed before the effective date of this Act are governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 13.  This Act takes effect September 1, 2023.