By:  Kolkhorst S.B. No. 1930

(Dutton, Garcia, Campos, Oliverson, Sherman, Sr., et al.)

A BILL TO BE ENTITLED

AN ACT

relating to policies and procedures regarding children placed by the Department of Family and Protective Services in a residential treatment center or qualified residential treatment program.

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

SECTION 1.  Section 107.002, Family Code, is amended by amending Subsection (b) and adding Subsection (j) to read as follows:

(b)  A guardian ad litem appointed for the child under this chapter shall:

(1)  within a reasonable time after the appointment, interview:

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

(B)  each person who has significant knowledge of the child's history and condition, including educators, child welfare service providers, and any foster parent of the child; and

(C)  the parties to the suit;

(2)  seek to elicit in a developmentally appropriate manner the child's:

(A)  expressed objectives; and

(B)  opinion of and concerns regarding the child's current or proposed placement;

(3)  consider the child's expressed objectives without being bound by those objectives;

(4)  encourage settlement and the use of alternative forms of dispute resolution; and

(5)  perform any specific task directed by the court.

(j)  If a child is or may be placed in a residential treatment center as defined by Section 263.001, a qualified residential treatment program as defined by Section 263.00201, or a similar treatment setting, the guardian ad litem:

(1)  shall:

(A)  review any available information regarding whether the placement is appropriate to meet the child's specific needs;

(B)  meet in person with the child before providing a recommendation under Paragraph (C); and

(C)  provide to the court by report or testimony a recommendation regarding the placement that is in the best interest of the child; and

(2)  may, as appropriate:

(A)  request a placement conference; and

(B)  participate in any conferences conducted by the Department of Family and Protective Services or the child's treatment team related to initial and ongoing placement in a residential treatment center, qualified residential treatment program, or similar treatment setting unless there is good cause shown for excluding the guardian ad litem.

SECTION 2.  Section 107.004, Family Code, is amended by adding Subsection (f) to read as follows:

(f)  If a child is considered for placement in a residential treatment center as defined by Section 263.001, a qualified residential treatment program as defined by Section 263.00201, or a similar treatment setting, the attorney ad litem:

(1)  shall:

(A)  review any available information related to the child's needs, including the child and adolescent needs and strengths assessment, any psychological evaluations, discharge notices from current or past placements, recent incident reports, and counseling notes;

(B)  review any available information regarding whether the placement is appropriate to meet the child's specific needs;

(C)  meet with the child before any hearing to allow the attorney ad litem to:

(i)  prepare for the hearing in accordance with the child's expressed representation objectives; and

(ii)  elicit, in a developmentally appropriate manner, the child's opinion of and concerns regarding the child's current or proposed placement;

(D)  advise the child in a developmentally appropriate manner regarding the department's request or recommendation for placement and the likelihood of the request being granted; and

(E)  advocate to the court for the child's specific desires regarding the requested placement in accordance with Subsection (a)(2); and

(2)  may, as appropriate:

(A)  request a placement conference; and

(B)  participate in any conferences conducted by the Department of Family and Protective Services or the child's treatment team related to initial and ongoing placement in a residential treatment center, qualified residential treatment program, or similar treatment setting.

SECTION 3.  Section 107.0131(a), Family Code, is amended to read as follows:

(a)  An attorney ad litem appointed under Section 107.013 to represent the interests of a parent:

(1)  shall:

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

(i)  the parent, unless the parent's location is unknown;

(ii)  each person who has significant knowledge of the case; and

(iii)  the parties to the suit;

(B)  investigate the facts of the case;

(C)  to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits:

(i)  obtain and review copies of all court files in the suit during the attorney ad litem's course of representation; and

(ii)  when necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan;

(D)  take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;

(E)  encourage settlement and the use of alternative forms of dispute resolution;

(F)  review and sign, or decline to sign, a proposed or agreed order affecting the parent;

(G)  meet before each court hearing with the parent, unless the court:

(i)  finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance is not feasible; or

(ii)  on a showing of good cause, authorizes the attorney ad litem to comply by conferring with the parent, as appropriate, by telephone or video conference;

(H)  abide by the parent's objectives for representation;

(I)  become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases; and

(J)  complete at least three hours of continuing legal education relating to representing parents in child protection cases as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education; and

(2)  is entitled to:

(A)  request clarification from the court if the role of the attorney ad litem is ambiguous;

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

(C)  consent or refuse to consent to an interview of the parent by another attorney;

(D)  receive a copy of each pleading or other paper filed with the court;

(E)  receive notice of each hearing in the suit;

(F)  participate in any case staffing conducted by the Department of Family and Protective Services in which the parent is invited to participate, including, as appropriate, a case staffing to develop a family plan of service, a family group conference, a permanency conference, a mediation, a case staffing to plan for the discharge and return of the child to the parent, a case staffing related to a placement in a residential treatment center or qualified residential treatment program, and any other case staffing that the department determines would be appropriate for the parent to attend, but excluding any internal department staffing or staffing between the department and the department's legal representative; and

(G)  attend all legal proceedings in the suit.

SECTION 4.  Section 263.001(a), Family Code, is amended by adding Subdivision (3-c) to read as follows:

(3-c)  "Residential treatment center" means a general residential operation licensed under Chapter 42, Human Resources Code, that provides treatment services.

SECTION 5.  Section 263.002, Family Code, is amended by adding Subsections (e) and (f) to read as follows:

(e)  If a child is placed or is referred to and awaiting placement in a residential treatment center, the court shall determine whether:

(1)  the child's needs can be met through placement in a family-like setting;

(2)  the recommended or existing program can provide the most effective and appropriate level of care for the child;

(3)  the recommended or existing program is the least restrictive setting consistent with the child's best interest and individual needs; and

(4)  the placement is consistent with the short-term and long-term goals for the child, as specified by the child's permanency plan.

(f)  In making a determination under Subsection (e), the court may consider:

(1)  medical, psychological, or psychiatric assessments;

(2)  the child's current treatment plan and progress being made;

(3)  any significant medical, legal, or behavioral incidents involving the child;

(4)  the reasons for the child's discharge from any previous placement or the child's current placement;

(5)  the programs available at the facility to address the child's needs;

(6)  the program's plan to discharge the child after treatment;

(7)  whether there are other programs that more effectively meet the child's needs; and

(8)  any other information that would assist the court in making the determination.

SECTION 6.  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 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;

(5)  based on the court's determination under Section 263.002, continued placement is appropriate if the child is placed in a residential treatment center; and

(6)  based on the court's determination under Section 263.00201, continued placement is appropriate if the child is placed in a qualified residential treatment program.

SECTION 7.  Section 263.306(a-1), Family Code, is amended to read as follows:

(a-1)  At each permanency hearing before a final order is rendered, the court shall:

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

(2)  review the efforts of the department or other agency in:

(A)  locating and requesting service of citation on all persons entitled to service of citation under Section 102.009; and

(B)  obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, relative of the child, or other adult identified by the child as a potential relative or designated caregiver;

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

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

(5)  review the permanency progress report to determine:

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

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

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

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

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

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

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

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

(G)  whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there have been major changes in the child's school performance or there have been serious disciplinary events;

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

(I)  for a child whose permanency goal is another planned permanent living arrangement:

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

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

(a)  return home;

(b)  be placed for adoption;

(c)  be placed with a legal guardian; or

(d)  be placed with a fit and willing relative;

(iii)  whether the department has conducted an independent living skills assessment under Section 264.121(a-3);

(iv)  whether the department has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;

(v)  if the youth is 16 years of age or older, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e); and

(vi)  if the youth is 18 years of age or older or has had the disabilities of minority removed, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e-1);

(J)  based on the court's determination under Section 263.002, whether continued placement is appropriate if the child is placed in a residential treatment center; and

(K)  based on the court's determination under Section 263.00201, whether continued placement is appropriate if the child is placed in a qualified residential treatment program;

(6)  determine whether to return the child to the child's parents if the child's parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(7)  estimate a likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in permanent managing conservatorship; and

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

SECTION 8.  Section 263.5031(a), Family Code, is amended to read as follows:

(a)  At each permanency hearing after the court renders a final order, the court shall:

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

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

(3)  for a child placed with a relative of the child or other designated caregiver, review the efforts of the department to inform the caregiver of:

(A)  the option to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and

(B)  the permanency care assistance program under Subchapter K, Chapter 264; and

(4)  review the permanency progress report to determine:

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

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

(C)  whether the department placed the child with a relative or designated caregiver and the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;

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

(E)  the appropriateness of the primary and alternative permanency goals for the child, whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:

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

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

(F)  for a child whose permanency goal is another planned permanent living arrangement:

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

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

(a)  return home;

(b)  be placed for adoption;

(c)  be placed with a legal guardian; or

(d)  be placed with a fit and willing relative;

(iii)  whether the department has conducted an independent living skills assessment under Section 264.121(a-3);

(iv)  whether the department has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;

(v)  if the youth is 16 years of age or older, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e); and

(vi)  if the youth is 18 years of age or older or has had the disabilities of minority removed, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e-1);

(G)  if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community;

(H)  whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;

(I)  for a child receiving psychotropic medication, whether the child:

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

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

(J)  whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events;

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

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

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

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

(b)  likely to result in the child's safe return to the child's parent; [~~and~~]

(L)  whether the department has identified a family or other caring adult who has made a permanent commitment to the child;

(M)  based on the court's determination under Section 263.002, whether continued placement is appropriate if the child is placed in a residential treatment center; and

(N)  based on the court's determination under Section 263.00201, whether continued placement is appropriate if the child is placed in a qualified residential treatment program.

SECTION 9.  Section 264.018(a)(5), Family Code, is amended to read as follows:

(5)  "Significant event" means:

(A)  a placement change, including failure by the department to locate an appropriate placement for at least one night;

(B)  a significant change in medical condition;

(C)  an initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication;

(D)  a major change in school performance or a serious disciplinary event at school;

(E)  a placement in a qualified residential treatment program as that term is defined by 42 U.S.C. Section 672(k)(4) or placement in a residential treatment center as defined by Section 263.001, including meetings or conferences to determine the appropriateness of such a placement; or

(F)  any event determined to be significant under department rule.

SECTION 10.  This Act takes effect September 1, 2023.