

SUBJECT: Permanency planning procedures for children residing in state institutions

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Hupp, Eissler, A. Allen, Goodman, Naishtat, Paxton, Reyna

0 nays

2 absent — J. Davis, Gonzalez Toureilles

SENATE VOTE: On final passage, April 11 — 29-1 (Fraser)

WITNESSES: For — Susan Murphree, Advocacy Inc.; Carole Smith, Private Providers Association of Texas; (*Registered, but did not testify*: Dennis Borel, Coalition of Texans with Disabilities; Will Brown, AARP - Texas; Cathy Cranston; Ron Cranston; Susanne Elrod, Texas Council of Community MHMR Centers; Richard Hernandez, EduCare Community Living; Bob Kafka, ADAPT of Texas, Institute for Disability Access; Amy Mizcles, The Arc of Texas, The Disability Policy Consortium; Beth Stalvey, Texas Council for Developmental Disabilities)

Against — None

On — Colleen Horton, Texas Center for Disability Studies, UT;
(*Registered, but did not testify*: David Rollins, Department of Aging and Disability Services)

BACKGROUND: According to Government Code, sec. 531.152, it is the policy of the state to provide encouragement and support for well-functioning families and ensure that each child receives the benefits of being a part of a successful permanent family as soon as possible. The 77th Legislature enacted SB 368 by Zaffirini in 2001, in reaction to the fact that many children residing in institutions did not have a permanency plan that worked toward the objectives of this policy. SB 368 was intended to make permanency planning procedures uniform across health and human services agencies.

The department responsible for a child may delegate its duty to develop a

permanency plan to a local mental retardation authority or enter into a memorandum of understanding with the authority to develop the plan for each child who lives in an institution. The department may also contract with a private entity other than the child's direct mental retardation service provider to develop the plan and must attempt to minimize conflicts of interest between the service provider and the interests of the child. Staff at residential care facilities for the mentally retarded retain the responsibility for conducting permanency planning activities for children residing at those institutions.

DIGEST: SB 40 would require the Department of Aging and Disability Services (DADS) to delegate permanency planning services.

In developing a permanency plan for a child who lived in an institution in Texas, DADS could not contract with a private entity that provided long-term institutional care. In addition to the authority DADS currently has to delegate its permanency planning duties, DADS personnel would be permitted to perform permanency planning procedures.

A contract or memorandum of understanding for provision of permanency planning services would include performance measures by which DADS could evaluate the effectiveness of the selected entity's permanency planning efforts. In implementing permanency planning procedures, DADS would minimize conflicts of interest between residential care institutions and the best interests of the child.

The institution in which the child lived would assist with permanency planning by cooperating with the entity responsible for developing the child's plan and participating in meetings to review the child's plan. The institution would have to refrain from providing the child's parent or guardian with inaccurate or misleading information on the risks of moving the child to another facility or community setting.

The institution would allow access to the child's records to the commission, appropriate health and human services agencies, and, to the extent permissible by confidentiality laws, the entity with which permanency planning was being coordinated.

If an agency determined that a waiver or authorization from a federal agency was necessary for implementing these provisions, the agency could

request the waiver or authorization and delay implementing a provision until the request was granted if this was done prior to implementing any of the provisions.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

The goal of permanency planning is to ensure that children grow up in families rather than institutional settings. However, when a facility makes money to care for a child, it has an incentive to keep that child in the institution. SB 40 would require, rather than permit, agencies to separate the responsibility and authority for permanency planning for children with disabilities from the institutions in which they reside. This would ensure that children received quality care and then returned to families when it was appropriate for their well-being.

Under current rules and statutes, the staff at residential care facilities for the mentally retarded retain the responsibility for conducting permanency planning activities, and this presents an inherent conflict of interest. Facilities that receive funding for keeping a child in a bed rarely devote the time, energy, and financial resources to developing the community supports needed to move a child to a family. Cases have arisen in which administrators at institutions have gone so far as to threaten a family seeking to be reunited in order to keep a child in their facility. This goes against the objectives of family reunification in statute and reduces the likelihood that children residing in those facilities actually will have the opportunity to return to their families or access family-based alternatives.

Although there is a small fiscal note associated with the bill, no new monies would be necessary because the HHSC and DADS have identified funding from existing resources that would be available during the next biennium. The provisions in the bill preventing the dissemination of misinformation by residential institutions appropriately would focus on these entities and no others because their operations are the only ones germane to this statute. They also are the entities that could stand to gain the most by ensuring that children remained in their facilities.

**OPPONENTS
SAY:**

Institutional care providers are not the only entities that may be responsible for interfering in permanency planning efforts. Other individuals and entities could have an interest in trying to persuade

families on courses of action that would benefit them. Institutions should not be singled out in protecting parents and guardians against misinformation and threats. Such provisions should be applicable to any individual or entity that could interfere in the permanency planning process. In addition, this bill carries a fiscal note that would require an additional \$340,948 of general revenue over the biennium. During tight fiscal times, the Legislature should be trying to reduce spending rather introducing more spending.

NOTES:

The fiscal note projects a cost of \$340,948 to general revenue related funds through the end of the biennium. The cost is associated with payroll for DADS personnel to create a permanency plan every six months for each of the 1,163 children currently receiving institutional care. Yearly costs would increase with a projected eight additional children requiring permanency planning services per month.