

BILL ANALYSIS

Senate Research Center

H.B. 3041
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Department of Family and Protective Services is tasked with protecting children in Texas from mistreatment and neglect and must often implement this consequential mission by removing children from homes deemed to be unsafe. Increasingly, however, children are removed from their homes due to purported safety concerns or allegations of neglect that, all too frequently, are the by-products of poverty rather than acts of malicious parents or guardians. Research has shown that children suffer additional trauma when they are removed from their homes and placed in foster care, even if only for a short time. The federal Family First Prevention Services Act, which became law in 2018, has for the first time made it possible for the State of Texas to access federal Title IV-E funding to pay a portion of the services that will help children stay in their homes and that will address safety factors, such as drug abuse, that would otherwise lead to charges of neglect or mistreatment and removal from the home. H.B. 3041 seeks to prevent children from needlessly entering into the foster care system by establishing a pilot program to provide matching federal dollars to help provide evidence-based prevention services, including mental health services, substance abuse treatment, and in-home intensive parenting support, for adults whose children are at imminent risk of entering foster care.

H.B. 3041 amends current law relating to the provision of certain services by the Department of Family and Protective Services as an alternative to removing a child and certain procedures with respect to children in the managing conservatorship of the department.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 262.1095, Family Code, by amending Subsections (a) and (b) and adding Subsection (d-1), as follows:

(a) Provides that the Department of Family and Protective Services (DFPS), when DFPS or another agency takes possession of a child under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child):

(1) is required to provide information as prescribed by Section 262.1095 (Information Provided to Relatives and Certain Individuals; Investigation) in writing to each adult, rather than as prescribed by Section 262.1095 to each adult, DFPS is able to identify and locate who meet certain criteria; and

(2) makes no changes to this subdivision.

(b) Requires that the information provided under Subsection (a):

(1) makes no changes to this subdivision;

(2) explain the options available to the individual to participate in the care and placement of the child and the support of the child's family, the methods by which the individual is authorized to exercise those options, and any requirements the individual is required to satisfy to exercise those options, including:

(A) the requirement that the individual be evaluated by DFPS under Section 262.114 (Evaluation of Identified Relatives and Other Designated Individuals; Placement) before the individual is authorized to serve as a substitute caregiver; and

(B) the deadlines before which the individual is required to respond to exercise those options;

(3) identify the options available to the individual that may be lost, rather than state that some options available to the individual may be lost, if the individual fails to respond in a timely manner;

(4) makes a nonsubstantive change to this subdivision; and

(5) include information regarding the procedures and timeline for a suit affecting the parent-child relationship under Chapter 262.

(d-1) Requires DFPS, immediately after DFPS identifies and locates an individual described by Subsection (a)(1), to provide the information required by this section.

SECTION 2. Amends Chapter 262, Family Code, by adding Subchapter F, as follows:

SUBCHAPTER F. FAMILY PRESERVATION SERVICES PILOT PROGRAM

Sec. 262.401. DEFINITIONS. Defines "child who is a candidate for foster care," "department," "family preservation service," "family preservation services plan," and "foster care."

Sec. 262.402. PILOT PROGRAM FOR FAMILY PRESERVATION SERVICES. (a) Requires DFPS to establish a pilot program that allows DFPS to dispose of an investigation by referring the family of a child who is a candidate for foster care for family preservation services and allowing the child to return home instead of entering foster care or by providing services to a pregnant or parenting foster youth. Requires DFPS to implement the pilot program in two child protective services regions in this state, one urban and one rural.

(b) Requires that the pilot program be implemented in at least one child protective services region in this state in which community-based care has been implemented under Subchapter B-1 (Community-Based Care), Chapter 264 (Child Welfare Services).

(c) Provides that in authorizing family preservation services for a child who is a candidate for foster care, the child's safety is the primary concern. Authorizes the services to be modified as necessary to accommodate the child's circumstances.

(d) Requires DFPS, in implementing the pilot program, to use:

(1) Title IV-E funds to pay for legal representation for parents in the manner provided by Section 107.015 (Attorney Fees) or to provide to counties a matching reimbursement for the cost of the legal representation; and

(2) funds received under the Temporary Assistance for Needy Families (TANF) program or other DFPS funds to provide enhanced in-home support services to families qualifying for prevention services under this

subchapter to achieve the objectives in the family preservation services plan.

Sec. 262.403. COURT ORDER REQUIRED. (a) Requires DFPS, subject to Subsection (b), to obtain a court order from a court of competent jurisdiction to compel the family of a child who is a candidate for foster care to obtain family preservation services and complete the family preservation services plan.

(b) Provides that DFPS is not required to obtain a court order to provide family preservation services to a pregnant or parenting foster youth.

Sec. 262.404. FILING SUIT; PETITION REQUIREMENTS. (a) Authorizes DFPS to file a suit requesting the court to render an order requiring the parent, managing conservator, guardian, or other member of the child's household to:

(1) participate in the family preservation services for which DFPS makes a referral or services DFPS provides or purchases to alleviate the effects of the abuse or neglect that has occurred; to reduce a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household; or to reduce a substantial risk of abuse or neglect caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household;

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

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

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

(c) Provides that except as otherwise provided by this subchapter, the suit is governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit.

(d) Requires that the petition for suit be supported by:

(1) a sworn affidavit based on personal knowledge and stating facts sufficient to support a finding that the child has been a victim of abuse or neglect or is at substantial risk of abuse or neglect and that there is a continuing danger to the child's physical health or safety caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household unless that person participates in family preservation services requested by DFPS; and

(2) a safety risk assessment for the child that documents the process for the child to remain at home with appropriate family preservation services instead of foster care, the specific reasons DFPS should provide family preservation services to the family, and the manner in which family preservation services will mitigate the risk of the child entering foster care.

(e) Authorizes the court, in a suit filed under this section, to render a temporary restraining order as provided by Section 105.001 (Temporary Orders Before Final Order).

(f) Requires the court to hold a hearing on the petition not later than the 14th day after the date the petition is filed unless the court finds good cause for extending that date for not more than 14 days.

Sec. 262.405. AD LITEM APPOINTMENTS. (a) Requires the court to appoint an attorney ad litem to represent the interests of the child immediately after a suit is filed under Section 262.404 but before the hearing to ensure adequate representation of the child. Provides that the attorney ad litem for the child has the powers and duties of an attorney ad litem for a child under Chapter 107 (Special Appointments, Child Custody Evaluations, and Adoption Evaluations).

(b) Requires the court to appoint an attorney ad litem to represent the interests of a parent for whom participation in family preservation services is being requested immediately after the suit is filed but before the hearing to ensure adequate representation of the parent. Provides that the attorney ad litem for the parent has the powers and duties of an attorney ad litem for a parent under Section 107.0131 (Powers and Duties of Attorney Ad Litem for Parent).

(c) Requires the court, before the hearing commences, to inform each parent of the parent's right to be represented by an attorney and for a parent who is indigent and appears in opposition to the motion, the parent's right to a court-appointed attorney.

(d) Requires the court, if a parent claims indigence, to require the parent to complete and file with the court an affidavit of indigence. Authorizes the court to consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. Authorizes the attorney ad litem appointed to represent the interests of the parent, if the court finds the parent is indigent, to continue the representation. Requires the court, if the court finds the parent is not indigent, to discharge the attorney ad litem from the appointment after the hearing and order the parent to pay the cost of the attorney ad litem's representation.

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

Sec. 262.406. COURT ORDER. (a) Requires the court, except as provided by Subsection (d), at the conclusion of the hearing in a suit filed under Section 262.404, to order DFPS to provide family preservation services and to execute a family preservation services plan developed in collaboration with the family of the child who is a candidate for foster care if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

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

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

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

(b) Requires that the court's order for family preservation services identify and require specific services narrowly tailored to address the factors that make the child a candidate for foster care and to include a statement on whether the services

to be provided to the family are appropriate to address the factors that place the child at risk of removal.

(c) Authorizes the court, in its discretion, to order family preservation services for a parent whose parental rights to another child were previously terminated.

(d) Authorizes the court, if the court finds, by clear and convincing evidence, that the parent has subjected the child to aggravated circumstances described by Section 262.2015 (Aggravated Circumstances), to order that family preservation services not be provided.

Sec. 262.407. FAMILY PRESERVATION SERVICES PLAN; CONTENTS. (a) Requires DFPS in consultation with the child's family, on order of the court under Section 262.406, to develop a family preservation services plan. Requires DFPS and the family to discuss each term and condition of the plan.

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

(c) Requires that the family preservation services plan:

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

(2) state the reasons DFPS is involved with the family;

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

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

(5) specify the tasks the family is required to complete during the effective period of the plan and include a schedule with appropriate completion dates for those tasks; and

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

(d) Requires that the family preservation services plan include a certain statement.

Sec. 262.408. FAMILY PRESERVATION SERVICES PLAN: SIGNING AND EFFECT. (a) Requires the family of a child who is a candidate for foster care and DFPS to sign the family preservation services plan and requires DFPS to submit a copy of the signed plan to the court for review.

(b) Authorizes DFPS, if the family is unwilling to participate in the development of the family preservation services plan, to submit the plan to the court without the parents' signatures.

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

(d) Provides that the family preservation services plan remains in effect until the 180th day after the date the court's order for family preservation services is signed, unless renewed by an order of the court, or the date the plan is amended or revoked by the court.

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

Sec. 262.409. AMENDED FAMILY PRESERVATION SERVICES PLAN. (a) Authorizes a family preservation services plan to be amended at any time. Requires DFPS or the single source continuum contractor and the parents of a child who is a candidate for foster care to jointly develop any amendment to the plan. Requires DFPS or the contractor to inform the parents of their rights related to the amended family preservation services plan process.

(b) Requires the parents and the person preparing the amended family preservation services plan to sign the amended plan and requires DFPS or the single source continuum contractor to submit the amended plan to the court for review.

(c) Authorizes DFPS or the single source continuum contractor, if the parents are unwilling to participate in the development of the amended family preservation services plan, to submit the amended plan to the court without the parents' signatures.

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

(e) Provides that the amended family preservation services plan is in effect until the 180th day after the date the court's order for family preservation services is signed, unless renewed by an order of the court, or the date the amended plan is modified or revoked by the court.

Sec. 262.410. COURT IMPLEMENTATION OF FAMILY PRESERVATION SERVICES PLAN. (a) Requires the court, after reviewing and certifying an original or any amended family preservation services plan, to incorporate the original and any amended plan into the court's order and authorizes the court to render additional appropriate orders to implement or require compliance with an original or amended plan.

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

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

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

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

(d) Requires a parent, managing conservator, guardian, or other member of a household who successfully completes the required family preservation services to obtain verification from the service provider of that completion. Requires DFPS to accept the service provider's verification provided under this subsection as proof that the person successfully completed the court-ordered family preservation services.

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

Sec. 262.413. EXTENSION OF ORDER. (a) Authorizes the court to extend an order for family preservation services rendered under this subchapter on a showing by DFPS of a continuing need for the order, after notice and hearing. Authorizes the court, except as provided by Subsection (b), to extend the order only one time for not more than 180 days.

(b) Authorizes the court to extend an order rendered under this subchapter for not more than an additional 180 days only if:

(1) the court finds that the extension is necessary to allow the person required to participate in family preservation services under the family preservation services plan time to complete those services, that DFPS made a good faith effort to timely provide the services to the person, that the person made a good faith effort to complete the services, and that the completion of the services is necessary to ensure the physical health and safety of the child; and

(2) the extension is requested by the person required to participate in family preservation services under the family preservation services plan or the person's attorney.

Sec. 262.414. EXPIRATION OF ORDER. Requires the court, on expiration of a court order for family preservation services under this subchapter, to dismiss the case.

Sec. 262.415. CONTRACT FOR SERVICES. (a) Authorizes DFPS to contract with one or more persons to provide family preservation services under the pilot program. Authorizes DFPS, in a child protective services region in this state in which community-based care under Subchapter B-1, Chapter 264, has been implemented and in which the pilot program is implemented, to contract with the single source continuum contractor to provide family preservation services under the pilot program.

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

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

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

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

(c) Requires DFPS to collaborate with a person selected to provide family preservation services to identify children who are candidates for foster care or who are pregnant or parenting foster youth and to ensure that the services are appropriate for children referred by DFPS.

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

Sec. 262.417. REPORT TO LEGISLATURE. (a) Requires DFPS, not later than the first anniversary of the date DFPS commences a pilot program under this subchapter and every two years after that date, to contract with an entity based in this state that is independent of DFPS and has demonstrated expertise in statistical, financial, logistical, and operational analysis to evaluate the implementation of the pilot program under this subchapter, assess its progress, and report its findings to the appropriate standing committees of the legislature having jurisdiction over child protective services and foster care matters. Requires that the report include certain information.

(b) Requires that performance-based outcomes for evaluating the pilot program include certain information.

SECTION 3. Amends Section 263.202(b), Family Code, to require the court to review the service plan that DFPS filed under Chapter 263 (Review of Placement of Children Under Care of Department of Family and Protective Services) for reasonableness, accuracy, and compliance with requirements of court orders and to make certain findings, including findings as to whether the plan is narrowly tailored, rather than reasonably tailored, to address any specific issues identified by DFPS.

SECTION 4. Amends Subchapter C, Chapter 264, Family Code, by adding Section 264.2031, as follows:

Sec. 264.2031. SELECTION OF SERVICE PROVIDER. (a) Authorizes a parent, managing conservator, guardian, or other member of a household ordered to participate in services under Section 264.203(a) (relating to certain services a court may order certain individuals to participate in on request of DFPS) to obtain those services from a qualified provider selected by the person.

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

(c) Requires a parent, managing conservator, guardian, or other member of a household who successfully completes the services ordered under Section 264.203(a) to obtain verification from the service provider of that completion. Requires DFPS to accept the service provider's verification provided under this subsection as proof that the person successfully completed the court-ordered services.

SECTION 5. Provides that the changes in law made by this Act to Section 262.1095, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. Provides that a suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2021.