

**LEGISLATIVE UPDATE:
TEXAS FAMILY CODE LEGISLATION
ENACTED BY THE 79th SESSION OF
THE TEXAS LEGISLATURE
AFFECTING ABUSED AND NEGLECTED CHILDREN**

Compiled by
John J. Sampson
William Benjamin Wynne Professor of Law
University of Texas at Austin
School of Law

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Robert O. Dawson Juvenile Law Institute
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JOHN J. SAMPSON

William Benjamin Wynne Professor of Law
University of Texas School of Law
727 East Dean Keeton Street
Austin, Texas 78705
(512) 232-1267 FAX (512) 471-6988
jsampson@mail.law.utexas.edu

Education

LL.B., 1966, Magna Cum Laude, Univ. of Minnesota; President, 50 Minn. L. Rev.; Order of the Coif

Private Practice of Law

Associate, Morrison Foerster, San Francisco 1966-1969

Law School Teaching

University of Texas at Austin School of Law, 1970 to present

Current Activities

Author and Lecturer, Legal Periodicals and CLE Programs: Topics include: Representation of Children; International Child Support; Child Abuse & Neglect; Child Custody & Support; Conflict of Laws; Parentage (UPA); Interstate Child Support Enforcement (UIFSA); Marital Property Rights

Children's Rights Clinic, Univ. Texas Law School, 1980 to present

Family Law Quarterly (ABA): Co-editor, 1998-2001; Reviewing Editor, 1995-98, 2002-present

Family Law Section Report (State Bar of Texas), Editor, 1976 to present

Family Law Council, State Bar of Texas, Legislative Advisor, 1975 to present

National Conference of Commissioners for Uniform State Laws

Reporter, Uniform Interstate Family Support Act [UIFSA 1993, 1996, 2001] (enacted in all U.S. jurisdictions), 1990 to present

Reporter, Uniform Parentage Act [UPA 2000 & 2002], 1997-to present

Pattern Jury Charges Vol. 5-Family Law: Chairman, 1987-95; member 1996 to present

U.S. Secretary of State's Advisory Committees on International Private Law: Protection of Minors, 1994-96; Enforcement of Maintenance, 1999-to present

U.S. State Dept. Delegation to The Hague, Netherlands, for multilateral negotiations to write new maintenance convention for support enforcement: May 2003; June 2004; April 2005

Honors and Completed Activities

ABA Family Law Section, Committees for Representing Children in Abuse and Neglect Cases and Custody Cases, 1992-2003

American Academy of Matrimonial Lawyers, Reporter, Model Act for Relocation, 1995-1997

Committee, Texas Family Code Recodification: Reporter, Titles 2 & 5, 1993-95; Titles 1 & 4, 1995-97

Committee, Redraft of Texas Marital Property Law, Chairman, 1999-2001

Dan Price Award for Outstanding Service to Texas Family Law, 1996

Delaware House of Representatives, "Tribute for contributions to child support enforcement" (2002)

Legal Aid Society of Central Texas, Board of Directors, 1973-2002

Legal Aid Clinic, Faculty Supervisor, University of Texas School of Law. 1970-1982

National Child Support Enforcement Ass'n (NCSEA): Community Service Award (2003); "Outstanding Individual Achievement Award" (1994)

Texas House of Representatives Resolution 1231 (1995) recognizing contributions to Texas family law

Texas Supreme Court Child Support Advisory Committee, Presiding Officer, 1986-89; member 1990-99

Women and the Law Section, State Bar of Texas, Executive Council. 1985-91, 1993-95

U.S. State Dept. Delegation to Costa Rica, Honduras, and El Salvador for bilateral negotiations of support enforcement agreements, 2002

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Texas Family Code Bills Enacted Into Law 79th Session, Texas Legislature

ALL LEGISLATION EFFECTIVE SEPTEMBER 1, 2005 (EXCEPT AS OTHERWISE NOTED)

CHAPTER 102. FILING SUIT

GRANDPARENT/THIRD PARTY STANDING TIGHTENED UP

HB 260 AMENDS THIS SECTION

§ 102.004. Standing for Grandparent or Other Person.

(a) In addition to the general standing to file suit provided by Section 102.003[~~(13)~~], a grandparent may file an original suit requesting managing conservatorship if there is satisfactory proof to the court that:

(1) the order requested is necessary because the child's present **circumstances would significantly impair** [~~environment presents a serious question concerning~~] the child's physical health or **emotional development** [~~welfare~~]; or

(2) both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.

(b) An original suit requesting possessory conservatorship may not be filed by a grandparent or other person. However, the court may grant a grandparent or other person deemed by the court to have had substantial past contact with the child

leave to intervene in a pending suit filed by a person authorized to do so under this subchapter **if there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development.**

(c) **Possession of or access** ~~[Access]~~ to a child by a grandparent is governed by the standards established by Chapter 153.

The changes in law made by this Act to Sections 102.004 and 102.009, Family Code, apply only to an original suit affecting the parent-child relationship filed on or after the effective date of this Act. An original suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that the suit was filed, and the former law is continued in effect for that purpose. [This Act takes effect June 18, 2005].

CHAPTER 107. SPECIAL APPOINTMENTS AND SOCIAL STUDIES

ANOTHER, ALBEIT LESS COMPREHENSIVE, REVISION OF DUTIES AND ROLES OF AMICUS AND AD LITEM ATTORNEYS AND CASA/GAL'S

| |
|---|
| HB 307 AMENDS THE FOLLOWING TWO CLARIFYING SECTIONS |
|---|

§ 107.002. Powers and Duties of Guardian ad Litem for Child.

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

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

* * *

(2) seek to elicit in a developmentally appropriate manner the child's expressed objectives ~~[of representation]~~;

(3) consider the child's expressed objectives ~~[of representation]~~ without being bound by those objectives;

(e) Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad litem has an opportunity to testify **regarding, and is permitted to** ~~[or]~~ submit a report regarding, the guardian ad litem's recommendations **relating to** ~~[regarding]~~:

(1) the best interests of the child; and

(2) the bases for the guardian ad litem's recommendations.

§ 107.003. Powers and Duties of Attorney ad Litem for Child and Amicus Attorney.

An attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court:

(1) shall:

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

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

(ii) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and

(iii) the parties to the suit;

(B) **seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;**

(C) **consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court;**

(D) investigate the facts of the case to the extent the attorney considers appropriate;

(E) ~~[(C)]~~ obtain and review copies of relevant records relating to the child as provided by Section 107.006;

(F) ~~[(D)]~~ participate in the conduct of the litigation to the same extent as an attorney for a party;

(G) ~~[(E)]~~ take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings; ~~[and]~~

(H) ~~(F)~~ encourage settlement and the use of alternative forms of dispute resolution; and

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

(2) must be trained in child advocacy or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

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

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

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

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

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

(F) ~~(C)~~ participate in any case staffing concerning the child conducted by an authorized agency; and

(G) ~~(D)~~ attend all legal proceedings in the suit.

SOME SPECIAL RULES ADDED FOR ATTORNEYS AD LITEM IN CPS CASES

HB 307 AMENDS THE FOLLOWING SUBSECTION (a)

§ 107.004. Additional Duties of Attorney ad Litem for Child.

(a) Except as otherwise provided by this chapter, the attorney ad litem appointed for a child shall, in a developmentally appropriate manner:

(1) ~~seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;~~

~~(2)~~ advise the child;

(2) ~~(3) provide guidance to the child;~~

~~(4)~~ represent the child's expressed objectives of representation and follow the child's expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and

has formed that relationship with the attorney ad litem;

~~(5) consider the impact on the child in formulating the attorney ad litem's presentation of the child's expressed objectives of representation to the court;~~ and

(3) as appropriate, considering the nature of the appointment, ~~(6)~~ become familiar with:

~~(A)~~ the American Bar Association's standards of practice for attorneys who represent children in abuse and neglect cases, ~~and~~

~~(B)~~ the suggested amendments to those standards adopted by the National Association of Counsel for Children, and the American Bar Association's standards of practice for attorneys who represent children in custody cases.

SB 6 ADDS THE FOLLOWING SUBSECTIONS (b)-(e)

(b) An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall complete at least three hours of continuing legal education relating to child advocacy as described by Subsection (c) as soon as practicable after the attorney ad litem's appointment. An attorney ad litem is not required to comply with this subsection if the court finds that the attorney ad litem has experience equivalent to the required education.

(c) The continuing legal education required by Subsection (b) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 or 263.

(d) Except as provided by Subsection (e), an attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall meet before each court hearing with:

(1) the child, if the child is at least four years of age; or

(2) the individual with whom the child ordinarily resides, including the child's parent, conservator, guardian, caretaker, or

custodian, if the child is younger than four years of age.

(e) An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 is not required to comply with Subsection (d) before a hearing if the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance with that subsection is not feasible or in the best interest of the child.

SB 6 ADDS THE FOLLOWING SECTION

§ 107.0045. Discipline of Attorney Ad Litem.

An attorney ad litem who fails to perform the duties required by Sections 107.003 and 107.004 is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.

The changes in law made by this section apply only to an attorney ad litem for a child appointed in a proceeding under Chapter 262 or 263, Family Code, on or after the effective date of this section. An attorney ad litem for a child appointed in a proceeding under Chapter 262 or 263, Family Code, before the effective date of this section is governed by the law in effect on the date the attorney ad litem was appointed, and the former law is continued in effect for that purpose.

The State Bar of Texas shall adopt rules governing the reporting of an attorney ad litem's timely completion of the continuing legal education required by Subsection (b), Section 107.004, Family Code, as added by this section.

***SUBSTITUTED JUDGMENT PROVISION
SUBSTANTIALLY REVISED FROM
2003—THE BENCH, BAR, AND CASA
MAKE THEMSELVES HEARD***

§ 107.008. Substituted Judgment of Attorney for Child.

(b) An ~~[Except as provided by Subsection (e), an]~~ attorney ad litem or an attorney appointed in the dual role who determines that the child cannot meaningfully formulate the child's expressed objectives of representation ~~[under Subsection (a)]~~ may present to the court a position that the attorney determines will serve the best interests of the child.

(c) If a guardian ad litem has been appointed for the child in a suit filed by a governmental entity requesting termination of the

parent-child relationship or appointment of the entity as conservator of the child, an ~~[An]~~ attorney ad litem ~~[or attorney appointed in the dual role]~~ who determines that the child cannot meaningfully formulate the child's expressed objectives of representation ~~[under Subsection (a)]~~ shall, if a guardian ad litem has been appointed for the child:

(1) shall consult with the guardian ad litem and, without being bound by the guardian ad litem's opinion or recommendation, ensure that the guardian ad litem's opinion and basis for any recommendation regarding the best interests of the child are presented to the court; and

(2) may present to the court a position that the attorney determines will serve ~~[present the child's objectives of representation to the court based on the guardian ad litem's opinion regarding]~~ the best interests of the child.

§ 107.009. Immunity.

(a) A guardian ad litem, an attorney ad litem, or an amicus attorney appointed under this chapter is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of guardian ad litem, attorney ad litem, or amicus attorney.

(b) Subsection (a) does not apply to an action taken, ~~[or]~~ a recommendation made, or an opinion given:

- (1) with conscious indifference or reckless disregard to the safety of another;
- (2) in bad faith or with malice; or
- (3) that is grossly negligent or willfully wrongful.

***MORE LEGAL REPRESENTATION FOR
INDIGENT PARENTS LEGISLATIVELY
DEMANDED—CAN YOU SAY “UN-
FUNDED MANDATE”?***

SB 6 ADDS THE FOLLOWING TWO
SECTIONS

§ 107.013. Mandatory Appointment of Attorney ad Litem for Parent.

(c) In a suit filed by a governmental entity requesting temporary managing conser-

vatorship of a child, the court shall appoint an attorney ad litem to represent the interests of an indigent parent of the child who responds in opposition to the suit.

§ 107.015. Attorney Fees.

(c) If indigency of the parents is shown, an attorney ad litem appointed to represent a child or parent in a suit filed by a governmental entity [~~in which termination of the parent-child relationship is requested~~] shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51. The court may not award attorney ad litem fees under this chapter against the state, a state agency, or a political subdivision of the state except as provided by this subsection.

The changes in law made by this section apply only to an attorney ad litem for a child appointed in a proceeding under Chapter 262 or 263, Family Code, on or after the effective date of this section. An attorney ad litem for a child appointed in a proceeding under Chapter 262 or 263, Family Code, before the effective date of this section is governed by the law in effect on the date the attorney ad litem was appointed, and the former law is continued in effect for that purpose.

SURROGATE PARENT ROLE RESTORED

§ 107.031. Volunteer Advocates.

(a) In a suit filed by a governmental entity **requesting termination of the parent-child relationship or appointment of the entity as conservator of the child**, the court may appoint a charitable organization composed of volunteer advocates whose charter mandates the provision of services to allegedly abused and neglected children or an individual who has received the court's approved training regarding abused and neglected children and who has been certified by the court to appear at court hearings as a guardian

ad litem for the child or as a volunteer advocate for the child.

(b) In a suit other than a suit filed by a governmental entity **requesting termination of the parent-child relationship or appointment of the entity as conservator of the child**, the court may appoint a charitable organization composed of volunteer advocates whose training provides for the provision of services in private custody disputes or a person who has received the court's approved training regarding the subject matter of the suit and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child. A person appointed under this subsection is not entitled to fees under Section 107.023.

(c) A court-certified volunteer advocate appointed under this section may be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b), if:

(1) the child is in the conservatorship of the Department of Family and Protective Services;

(2) the volunteer advocate is serving as guardian ad litem for the child; and

(3) a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code.

NOTE: The sweeping revision of Chapter 107 in 2003 did not properly take into account the fact that introduction of the function of an attorney in a private litigation not involving a governmental entity would often fall to an "amicus attorney," nor that only nonlawyers (or lawyers not functioning as such) may be appointed as a "guardian ad litem." To remedy this semantic oversight, H.B. 307 amends or adds the following fifteen (15) statutes to clarify exactly which of the three roles are suitable in the context of the statute: TEX. FAM. CODE §§ 2.103(e); 31.002(b); 31.004; 101.0017; 101.0018; 101.0145; 105.004; 160.608(c); 160.612(b); 161.202; 203.004(a); 231.109(e); 235.001(b); 235.002; 263.303(a).

CHAPTER 151. RIGHTS AND DUTIES IN THE PARENT-CHILD RELATIONSHIP

CORPORAL PUNISHMENT LIMITED TO SPECIFIED RELATIVES

§ 151.001. Rights and Duties of Parent.

(e) Only the following persons may use corporal punishment for the reasonable discipline of a child:

- (1) a parent or grandparent of the child;
- (2) a stepparent of the child who has the duty of control and reasonable discipline of the child; and
- (3) an individual who is a guardian of the child and who has the duty of control and reasonable discipline of the child.

CHAPTER 153. CONSERVATORSHIP, POSSESSION AND ACCESS

ACCESS EXTENDED TO ADULT SIBLING OF CPS CHILD

HB 270 ADDS THE FOLLOWING THREE SECTIONS

§ 102.0045. Standing for Sibling.

(a) The sibling of a child may file an original suit requesting access to the child as provided by Section 153.551 if the sibling is at least 18 years of age.

(b) Access to a child by a sibling of the child is governed by the standards established by Subchapter J, Chapter 153.

(b) In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child or on the court's own motion, the court may interview the child in chambers to determine the child's wishes as to possession, access, or any other issue in the suit affecting the parent-child relationship [When the issue of managing conservatorship is contested, on the application of a party, the court shall interview a child 12 years of age or older and may interview a child under 12 years of age].

(c) Interviewing a child does not diminish the discretion of the court in determining the best interests of the child.

(d) In a jury trial, the court may not interview the child in chambers regarding an issue on which a party is entitled to a jury verdict.

(e) In any trial or hearing, the [(e) The] court may permit the attorney for a party, the amicus attorney, the guardian ad litem for the child, or the attorney ad litem for the child to be present at the interview.

JUDGE'S INTERVIEW OF CHILD IN CHAMBERS REVISED

HB 260 AMENDS THIS SECTION

§ 153.009. Interview of Child in Chambers.

(a) In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child, the court shall [may] interview [the child] in chambers a child 12 years of age or older and may interview in chambers a child under 12 years of age to determine the child's wishes as to conservatorship or as to the person who shall have the exclusive right to determine the child's primary residence. The court may also interview a child in chambers on the court's own motion for a purpose specified by this subsection.

(f) [(d)] On the motion of a party, the amicus attorney, or the attorney ad litem for the child, or on the court's own motion, the court shall cause a record of the interview to be made when the child is 12 years of age or older. A record of the interview shall be part of the record in the case.

The changes in law made by this Act to Section ... 153.009, Family Code, apply only to a suit affecting the parent-child relationship pending before a trial court on or filed on or after the effective date of this Act.

This Act is effective June 18, 2005.

SUBCHAPTER J. RIGHTS OF SIBLINGS

§ 153.551. Suit for Access.

(a) The sibling of a child who is separated from the child because of an action taken by the Department of Family and Protective Services may request access to the child by filing:

- (1) an original suit; or
- (2) a suit for modification as provided by Chapter 156.

(b) The sibling of a child may request access to the child in a suit filed for the sole purpose of requesting the relief, without regard to whether the appointment of a managing conservator is an issue in the suit.

§ 153.552. Access to Sibling.

The court shall order reasonable access to a child by the child’s sibling if the court finds that access is in the best interest of the child.

PARENTING PLAN, PARENTING COORDINATOR—WHAT AND WHO ARE THESE?

HB 252 ADDS THE FOLLOWING FOURTEEN SECTIONS

§ 153.007. Agreed Parenting Plan [Agreement Concerning Conservatorship].

(a) To promote the amicable settlement of disputes between the parties to a suit, the parties may enter into a written **agreed parenting plan [agreement]** containing provisions for conservatorship and possession of the child and for modification of the **parenting plan [agreement]**, including variations from the standard possession order.

(b) If the court finds that the **agreed parenting plan [agreement]** is in the child’s best interest, the court shall render an order in accordance with the **parenting plan [agreement]**.

(c) Terms of the **agreed parenting plan [agreement]** contained in the order or incorporated by reference regarding conservatorship or support of or access to a child in an order may be enforced by all remedies available for enforce-

ment of a judgment, including contempt, but are not enforceable as a contract.

(d) If the court finds the **agreed parenting plan [agreement]** is not in the child’s best interest, the court may request the parties to submit a revised **parenting plan [agreement]** or the court may render an order for the conservatorship and possession of the child.

§ 153.133. Parenting Plan [Agreement] for Joint Managing Conservatorship.

(a) If a written **agreed parenting plan [agreement of the parents]** is filed with the court, the court shall render an order appointing the parents as joint managing conservators only if the **parenting plan [agreement]**:

* * *

(b) The **agreed parenting plan must [agreement may]** contain an alternative dispute resolution procedure that the parties agree to use before requesting enforcement or modification of the terms and conditions of the joint conservatorship through litigation, except in an emergency.

§ 153.134. Court-Ordered Joint Conservatorship.

(a) If a written **agreed parenting plan [agreement of the parents]** is not filed with the court, the court may render an order appointing the parents joint managing conservators only if the appointment is in the best interest of the child, considering the following factors:

* * *

Subchapter J, Chapter 153, Family Code, as added by this Act, and the changes in law made by this Act to Sections 153.007, 153.133, and 153.134, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by Chapter 153, Family Code, as it existed before amendment by this Act, and the former law is continued in effect for that purpose.

The legislature finds that the use of parenting plans and parenting coordinators in suits affecting the parent-child relationship will assist in promoting the best interest of children and in helping litigants resolve their issues relating to parenting. The legislature further finds that conciliatory forms of dispute resolution, including mediation and the use of parenting coordinators, promote the policy set forth in Section 153.001, Family Code.

**SUBCHAPTER J. PARENTING PLAN AND
PARENTING COORDINATOR**

§ 153.601. Definitions.

In this subchapter:

(2) the parties shall use the designated process to resolve disputes.

(c) If the parties cannot reach agreement on a final parenting plan, the court, on the motion of a party or on the court's own motion, may order appropriate dispute resolution proceedings under Section 153.0071 to determine a final parenting plan.

(d) If the parties have not reached agreement on a final parenting plan on or before the 30th day before the date set for trial, each party shall file with the court and serve a proposed final parenting plan. Failure by a party to comply with this subsection may result in the court's adoption of the proposed final parenting plan filed by the opposing party if the court finds that plan to be in the best interest of the child.

(e) Each party filing a proposed final parenting plan must attach:

(1) a verified statement of income determined in accordance with the child support guidelines and related provisions prescribed by Chapter 154; and

(2) a verified statement that the plan is proposed in good faith and is in the best interest of the child.

§ 153.604. Modification of Final Parenting Plan.

(a) In a suit for modification, a proposed parenting plan shall be filed with the court and served with the petition for modification and with the response to the petition for modification, unless the modification is sought only with regard to child support. The obligor party's proposed parenting plan must be accompanied by a verified statement of income determined in accordance with the child support guidelines and related provisions prescribed by Chapter 154.

(b) The procedure for modifying a final parenting plan is governed by Chapter 156.

§ 153.605. Appointment of Parenting Coordinator.

(a) In a suit affecting the parent-child relationship, the court may, on its own motion or on a motion or agreement of the parties, appoint a parenting coordinator to assist the par-

ties in resolving issues related to parenting or other family issues in the suit.

(b) The court may not appoint a parenting coordinator if any party objects unless the court makes specific findings that:

(1) the case is or is likely to become a high-conflict case; or

(2) the appointment of a parenting coordinator is in the best interest of any minor child in the suit.

(c) Notwithstanding any other provision of this subchapter, a party may at any time prior to the appointment of a parenting coordinator file a written objection to the appointment of a parenting coordinator on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, a parenting coordinator may not be appointed unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If a parenting coordinator is appointed, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order may provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during the parenting coordination.

§ 153.606. Authority of Parenting Coordinator.

(a) The authority of a parenting coordinator must be specified in the order appointing the parenting coordinator and limited to matters that will aid the parties in:

(1) identifying disputed issues;

(2) reducing misunderstandings;

(3) clarifying priorities;

(4) exploring possibilities for problem solving;

(5) developing methods of collaboration in parenting;

(6) developing a parenting plan; and

(7) complying with the court's order regarding conservatorship or possession of and access to the child.

(b) The appointment of a parenting coordinator does not divest the court of:

(1) its exclusive jurisdiction to determine issues of conservatorship, support, and possession of and access to the child; and

(2) the authority to exercise management and control of the suit.

(c) The parenting coordinator may not modify any order, judgment, or decree but may urge or suggest that the parties agree to minor temporary departures from a parenting plan if the parenting coordinator is authorized by the court to do so. Any agreement made by the parties and the parenting coordinator may be reduced to writing and presented to the court for approval.

(d) Meetings between the parenting coordinator and the parties may be informal and are not required to follow any specific procedures.

(e) A parenting coordinator may not:

(1) be compelled to produce work product developed during the appointment as parenting coordinator;

(2) be required to disclose the source of any information;

(3) submit a report into evidence, except as required by Section 153.608; or

(4) testify in court.

(f) Subsection (e) does not affect the duty to report child abuse or neglect under Section 261.101.

§ 153.607. Removal of Parenting Coordinator.

(a) Except as otherwise provided by this section, the court shall reserve the right to remove the parenting coordinator in the court's discretion.

(b) The court may remove the parenting coordinator:

(1) on the request and agreement of both parties; or

(2) on the motion of a party, if good cause is shown.

§ 153.608. Report of Parenting Coordinator.

A parenting coordinator shall submit a written report to the court and to the parties as often as ordered by the court. In the report, the parenting coordinator may give only an opinion regarding whether the parenting coordination is succeeding and should continue.

§ 153.609. Compensation of Parenting Coordinator.

(a) A court may not appoint a parenting coordinator, other than an employee described by Subsection (c) or a volunteer appointed under Subsection (d), unless the court finds that the parties have the means to pay the fees of the parenting coordinator.

(b) Any fees of a parenting coordinator appointed under Subsection (a) shall be allocated between the parties as determined by the court.

(c) Public funds may not be used to pay the fees of a parenting coordinator. Notwithstanding this prohibition, a court may appoint an employee of the court, the domestic relations office, or a comparable county agency to act as a parenting coordinator if personnel are available to serve that function.

(d) If due to hardship the parties are unable to pay the fees of a parenting coordinator, and a public employee is not available under Subsection (c), the court, if feasible, may appoint a person to act as a parenting coordinator on a volunteer basis.

§ 153.610. Qualifications of Parenting Coordinator.

(a) The court shall determine the required qualifications of a parenting coordinator, provided that a parenting coordinator must at least:

(1) hold a bachelor's degree in counseling, education, family studies, psychology, or social work and, unless waived by the court, complete a parenting coordinator course of at least 16 hours; or

(2) hold a graduate degree in a mental health profession, with an emphasis in family and children's issues.

(b) In addition to the qualifications prescribed by Subsection (a), a parenting coordinator must complete at least eight hours of family violence dynamics training provided by a family violence service provider.

(c) The actions of a parenting coordinator who is not an attorney do not constitute the practice of law.

§ 153.611. Exception for Certain Title IV-D Proceedings.

Notwithstanding any other provision of this subchapter, this subchapter does not apply to a proceeding in a Title IV-D case relating to the determination of parentage or establishment, modification, or enforcement of a child support or medical support obligation.

WHITHER GOETH THE FAMILY CODE RE PARENTING PLAN AND COORDINATORS, AND TERMINOLOGY?

H.C.R. No. 153 HOUSE CONCURRENT RESOLUTION

WHEREAS, Title 1 of the Texas Family Code was originally enacted by Chapter 888, Acts of the 61st Legislature, Regular Session, 1969; subsequently, Titles 2 and 3 were added by the 63rd Legislature in 1973, Title 4 was added by the 66th Legislature in 1979, and Title 5 was added by the 74th Legislature in 1995; and

WHEREAS, The codification of the Family Code and the amendments thereto by successive legislatures have done much to advance the interests of Texas families and children; and

WHEREAS, The 1973 enactments provided for suits affecting the parent-child relationship and introduced the terms “managing conservator,” “possessory conservator,” “possession,” and “access” as they relate to the family; and

WHEREAS, The legislature has declared it to be a public policy of this state, in cases of marital dissolution, to encourage parents to have frequent contact with their children, as appropriate for the circumstances; and

WHEREAS, During the past 32 years, significant research in family dynamics has led to an emergence of new terms that are more commonly used to describe the relationship between parents in a dissolution of marriage, including “parenting plans” and “parenting time” and other neutral terms; similarly, advances in the field have rendered obsolete such terms as “managing conservator” and “possessory conservator”; now, therefore, be it

RESOLVED, That the 79th Legislature of the State of Texas hereby request that the Texas Legislative Council schedule a revision of the Family Code during the 2005-2006 interim using updated terminology as described in this resolution; and, be it further

RESOLVED, That the secretary of state forward an official copy of this resolution to the joint chairs of the Texas Legislative Council.

CHAPTER 161. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

FEW CHANGES MADE TO TERMINATION, BUT ONE GOOD IDEA IS PROBLEMATIC

HB 657 AMENDS THIS SECTION

§ 161.001. Involuntary Termination of Parent-Child Relationship.

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

* * *

(T) been convicted of the murder of the other parent of the child under Section

19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code; and

(2) that termination is in the best interest of the child.

The change in law made by this Act applies only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act 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.

MEDICAL HISTORY “REQUIRED” IN TERMINATION SUIT—ENFORCEMENT?

HB 1999 AMENDS THE FOLLOWING TWO SECTIONS

§ 161.1031. Medical History Report.

(a) A parent who signs an affidavit of voluntary relinquishment of parental rights under Section 161.103 regarding a biological child must also prepare a medical history report that addresses the medical history of the parent and the parent’s ancestors.

(b) The Department of Family and Protective Services, in cooperation with the Department of State Health Services, shall adopt a form that a parent may use to comply with this section. The form must be designed to permit a parent to identify any medical condition of the parent or the parent’s ancestors that could indicate a predisposition for the child to develop the condition.

(c) The medical history report shall be used in preparing the health, social, educational, and genetic history report required by Section 162.005 and shall be made available to persons granted access under Section 162.006 in the manner provided by that section.

§ 161.2021. Medical History Report.

(a) In a termination suit, the court shall order each parent before the court to provide information regarding the medical history of the parent and the parent’s ancestors.

(b) A parent may comply with the court’s order under this section by completing the medical history report form adopted by the Department of Family and Protective Services under Section 161.1031.

(c) If the Department of Family and Protective Services is a party to the termination suit, the information provided under this section must be maintained in the department records relating to the child and made available to persons with whom the child is placed.

Section 161.1031, Family Code, as added by this Act, applies only to a person who signs an affidavit of voluntary relinquishment of parental rights under Section 161.103, Family Code, on or after the effective date of this Act.

Section 161.2021, Family Code, as added by this Act, applies only to a suit affecting the parent-child relationship pending in a trial court on the effective date of this Act or filed on or after that date. A suit affecting the parent-child relationship in which a final order is rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered.

Subtitle C. Judicial Resources and Services

CHAPTER 201. ASSOCIATE JUDGE

TEMPORARY ORDERS ADDED TO ASSOCIATE JUDGE’S AUTHORITY

HB 1179 AMENDS THIS SECTION

§ 201.007. Powers of Associate Judge.

(a) Except as limited by an order of referral, an associate judge may:

* * *

(14) render and sign:

(A) a final order agreed to in writing as to both form and substance by all parties; ~~or~~

(B) a final default order; **or**

(C) a temporary order; and

(15) take action as necessary and proper for the efficient performance of the associate judge’s duties.

(c) An agreed order, ~~or~~ a default order, **or a temporary order** rendered and signed by an associate judge under Subsection (a) constitutes an order of the referring court.

The change in law made by this Act applies to a proceeding under Title 1, 4, or 5, Family Code, pending before a trial court on, or filed on or after, the effective date of this Act.

CHAPTER 261. INVESTIGATION OF CHILD ABUSE OR NEGLECT

SENATE BILL SIX EXERTS ITSELF

SB 6 AMENDS THIS SECTION

§ 261.001. Definitions.

(2) "Department" means the Department of Family and Protective [and Regulatory] Services.

* * *

(4) "Neglect" includes:

* * *

(B) the following acts or omissions by a person:

* * *

(v) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; or

* * *

SB 6 AMENDS THIS SECTION

§ 261.002. Central Registry.

(c) The department may enter into agreements with other states to allow for the exchange of reports of child abuse and neglect in other states' central registry systems. The department shall use information obtained under this subsection in performing the background checks required under Section 42.056, Human Resources Code. The department shall cooperate with federal agencies and shall provide information and reports of child abuse and neglect to the appropriate federal agency that maintains the national registry for child abuse and neglect, if a national registry exists.

HB 1575 AMENDS THIS SECTION

§ 261.101. Persons Required to Report; Time to Report.

(b) If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the

child has been abused as defined by Section 261.001 or 261.401, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

HB 1970 AMENDS THIS SECTION

§ 261.103. Report Made to Appropriate Agency.

(a) Except as provided by Subsections [Subsection] (b) and (c) and Section 261.405, a report shall be made to:

(1) any local or state law enforcement agency;

(2) the department [if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child];

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or

(4) the agency designated by the court to be responsible for the protection of children.

(c) Notwithstanding Subsection (a), a report, other than a report under Subsection (a)(3) or Section 261.405, must be made to the department if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

The change in law made by this Act to Section 261.103, Family Code, applies only to a report of the abuse or neglect of a child that is made on or after the effective date of this Act. A report made before that date is governed by the law in effect at the time the report was made, and the former law is continued in effect for that purpose.

SB 6 AMENDS THIS SECTION

**§ 261.107. False Report; Criminal Penalty;
Civil Penalty.**

(a) A person commits an offense if, **with the intent to deceive**, the person knowingly [~~or intentionally~~] makes a report as provided in this chapter that [~~the person knows~~] is false [~~or lacks factual foundation~~]. An offense under this **subsection** [~~section~~] is a **state jail felony** [~~Class A misdemeanor~~] unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a [~~state jail~~] **felony of the third degree**.

(d) The court shall order a person who is convicted of an offense under Subsection (a) to pay any reasonable attorney's fees incurred by the person who was falsely accused of abuse or neglect in any proceeding relating to the false report.

(e) A person who engages in conduct described by Subsection (a) is liable to the state for a civil penalty of \$1,000. The attorney general shall bring an action to recover a civil penalty authorized by this subsection.

The changes in law made by Subsection (a), Section 261.107, Family Code, as amended by this section, and Subsection (d), Section 261.107, Family Code, as added by this section, apply only to an offense committed on or after the effective date of this section. An offense committed before the effective date of this section is covered by Section 261.107, Family Code, as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense is committed before the effective date of this section if any element of the offense occurs before that date.

Subsection (e), Section 261.107, Family Code, as added by this section, applies only to conduct that occurs on or after the effective date of this section. Conduct that occurs before the effective date of this section is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SB 6 AMENDS THIS SECTION

§ 261.201. Confidentiality and Disclosure of Information.

(f-1) The department shall provide to a relative or other individual with whom a child is placed any information the department considers necessary to ensure that the relative or other individual is prepared to meet the needs of the child. The information required by this

subsection may include information related to any abuse or neglect suffered by the child.

SB 6 AMENDS THIS SECTION

§ 261.301. Investigation of Report.

(a) With assistance from the appropriate state or local law enforcement agency **as provided by this section**, the department or designated agency shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare. The investigation shall be conducted without regard to any pending suit affecting the parent-child relationship.

(d) The department **shall** [~~may~~] by rule assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child. **The rules must require the department, subject to the availability of funds, to:**

(1) immediately respond to a report of abuse and neglect that involves circumstances in which the death of the child or substantial bodily harm to the child would result unless the department immediately intervenes;

(2) respond within 24 hours to a report of abuse and neglect that is assigned the highest priority, other than a report described by Subdivision (1); and

(3) respond within 72 hours to a report of abuse and neglect that is assigned the second highest priority.

(f) An investigation of a report to the department [~~that is assigned the highest priority in accordance with department rules adopted under Subsection (d) and~~] that alleges **that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child shall be conducted jointly by a peace officer, as defined by Article 2.12, Code of Criminal Procedure, from the appropriate local law enforcement agency and the department or the agency responsible for conducting an investigation under Subchapter E.**

(g) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under **this section** [~~Subsection (f)~~] does not constitute grounds to prevent or prohibit the department from performing its duties under this subtitle. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under **this section** [~~Subsection (f)~~].

(h) The department and the appropriate local law enforcement agency shall conduct an investigation, other than an investigation under Subchapter E, as provided by this section and Article 2.27, Code of Criminal Procedure, if the investigation is of a report [~~of child abuse or neglect that is assigned the highest priority in accordance with department rules adopted under Subsection (d) and~~] that alleges **that a child has been or may be the victim of conduct that constitutes a criminal offense that poses** an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child. Immediately on receipt of a report described by this subsection, the department shall notify the appropriate local law enforcement agency of the report.

The change in law made by this section to Section 261.301, Family Code, applies to the investigation of a report of child abuse or neglect made on or after the effective date of this section. The investigation of a report of child abuse or neglect made before the effective date of this section 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.

The Department of Family and Protective Services shall develop and implement an automated tracking and reporting system that enables the department to track information on initial contacts to monitor compliance with the requirements of Subsection (d), Section 261.301, Family Code, as amended by this section, relating to the timely response to reports of abuse and neglect.

The executive commissioner of the Health and Human Services Commission shall adopt the rules as required by Subsection (d), Section 261.301, Family Code, as amended by this section, not later than September 1, 2007.

SB 6 ADDS THIS SECTION

§ 261.3011. Joint Investigation Guidelines and Training.

(a) The department shall, in consultation with the appropriate law enforcement agencies, develop guidelines and protocols for joint investigations by the department and the

law enforcement agency under Section 261.301. The guidelines and protocols must:

(1) clarify the respective roles of the department and law enforcement agency in conducting the investigation;

(2) require that mutual child protective services and law enforcement training and agreements be implemented by both entities to ensure the integrity and best outcomes of joint investigations; and

(3) incorporate the use of forensic methods in determining the occurrence of child abuse and neglect.

(b) The department shall collaborate with law enforcement agencies to provide to department investigators and law enforcement officers responsible for investigating reports of abuse and neglect joint training relating to methods to effectively conduct joint investigations under Section 261.301. The training must include information on interviewing techniques, evidence gathering, and testifying in court for criminal investigations, as well as instruction on rights provided by the Fourth Amendment to the United States Constitution.

CPS NOTICE TO PARENT OF INTENT TO TRANSPORT CHILD SOUNDS REASONABLE—BUT IT WON'T BE EASY

HB 802 & SB 6 ADD THIS SECTION—
IDENTICAL TEXT

§ 261.3012. Completion of Paperwork.

An employee of the department who responds to a report that is assigned the highest priority in accordance with department rules adopted under Section 261.301(d) shall identify, to the extent reasonable under the circumstances, forms and other paperwork that can be completed by members of the family of the child who is the subject of the report. The department employee shall request the assistance of the child's family members in completing that documentation but remains responsible for ensuring that the documentation is completed in an appropriate manner.

[H.B. 802] This Act takes effect May 17, 2005.

[S.B. 6] This Act takes effect September 1, 2005.

SB 6 AMENDS THIS SECTION

§ 261.3015. Flexible Response System.

(a) In assigning priorities and prescribing investigative procedures based on the severity and immediacy of the alleged harm to a child under Section 261.301(d), the **department** ~~board~~ **rule** by ~~rule~~

SB 6 ADDS THIS SECTION

§ 261.3021. Casework Documentation and Management.

Subject to the appropriation of money for these purposes, the department shall:

(1) identify critical investigation actions that impact child safety and require department caseworkers to document those actions in a child's case file not later than the day after the action occurs;

(2) identify and develop a comprehensive set of casework quality indicators that must be reported in real time to support timely management oversight;

(3) provide department supervisors with access to casework quality indicators and train department supervisors on the use of that information in the daily supervision of caseworkers;

(4) develop a case tracking system that notifies department supervisors and management when a case is not progressing in a timely manner;

(5) use current data reporting systems to provide department supervisors and management with easier access to information; and

(6) train department supervisors and management on the use of data to monitor cases and make decisions.

SB 6 ADDS THIS SECTION

§ 261.3022. Child Safety Check Alert List.

(a) Subject to the availability of funds, the Department of Public Safety of the State of Texas shall create a child safety check alert list as part of the Texas Crime Information Center to help locate a family for purposes of investigating a report of child abuse or neglect.

(b) If the child safety check alert list is established and the department is unable to locate a family for purposes of investigating a report of child abuse or neglect, after the department has exhausted all means available to the department for locating the family, the department may seek assistance under this section from the appropriate county attorney, district attorney, or criminal district attorney

with responsibility for representing the department as provided by Section 264.009.

(c) If the department requests assistance, the county attorney, district attorney, or criminal district attorney, as applicable, may file an application with the court requesting the issuance of an ex parte order requiring the Texas Crime Information Center to place the members of the family the department is attempting to locate on a child safety check alert list. The application must include a summary of:

(1) the report of child abuse or neglect the department is attempting to investigate; and

(2) the department's efforts to locate the family.

(d) If the court determines after a hearing that the department has exhausted all means available to the department for locating the family, the court shall approve the application and order the appropriate law enforcement agency to notify the Texas Crime Information Center to place the family on a child safety check alert list. The alert list must include:

(1) the name of the family member alleged to have abused or neglected a child according to the report the department is attempting to investigate;

(2) the name of the child who is the subject of the report;

(3) a code identifying the type of child abuse or neglect alleged to have been committed against the child;

(4) the family's last known address; and

(5) the minimum criteria for an entry as established by the center.

SB 6 ADDS THIS SECTION

§ 261.3023. Law Enforcement Response To Child Safety Check Alert.

(a) If a law enforcement officer encounters a person listed on the Texas Crime Information Center's child safety check alert list who is alleged to have abused or neglected a child, or encounters a child listed on the alert list who is the subject of a report of child abuse or neglect the department is attempting to in-

investigate, the officer shall request information from the person or the child regarding the child's well-being and current residence.

(b) If the law enforcement officer determines that the circumstances described by Section 262.104 exist, the officer may take possession of the child without a court order as authorized by that section if the officer is able to locate the child. If the circumstances described by Section 262.104 do not exist, the officer shall obtain the child's current address and any other relevant information and report that information to the department.

SB 6 ADDS THIS SECTION

§ 261.3024. Removal From Child Safety Check Alert List.

(a) A law enforcement officer who locates a child listed on the Texas Crime Information Center's child safety check alert list who is the subject of a report of child abuse or neglect the department is attempting to investigate and who reports the child's current address and other relevant information to the department under Section 261.3023 shall report to the Texas Crime Information Center that the child has been located.

(b) If the department locates a child described by Subsection (a) through a means other than information reported by a law enforcement officer under Subsection (a), the department shall report to the Texas Crime Information Center that the child has been located.

(c) On receipt of notice under this section that a child has been located, the Texas Crime Information Center shall remove the child and the child's family from the child safety check alert list.

SB 6 ADDS THIS SECTION

§ 261.3031. Failure To Cooperate With Investigation; Department Response.

If a parent or other person refuses to cooperate with the department's investigation of the alleged abuse or neglect of a child and the refusal poses a risk to the child's safety, the department shall seek assistance from the appropriate county attorney or district attorney

or criminal district attorney with responsibility for representing the department as provided by Section 264.009 to obtain a court order as described by Section 261.303.

WEIGHING FOURTH AMENDMENT RIGHTS vs. INTERFERENCE WITH INVESTIGATION

SB 6 ADDS THIS SECTION

§ 261.3032. Interference With Investigation; Criminal Penalty.

(a) A person commits an offense if, with the intent to interfere with the department's investigation of a report of abuse or neglect of a child, the person relocates the person's residence, either temporarily or permanently, without notifying the department of the address of the person's new residence or conceals the child and the person's relocation or concealment interferes with the department's investigation.

(b) An offense under this section is a Class B misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

A LITTLE MORE NOTICE GIVEN; TO BE BALANCED BY REQUEST FOR MUCH MORE INFORMATION IN RETURN

BILINGUALISM IS HERE AND NOW

SB 6 AMENDS THIS SECTION

§ 261.307. Information Relating to Investigation Procedure.

(a) As soon as possible after initiating an investigation of a parent or other person having legal custody of a child, the department shall provide to the person:

(1) a ~~[brief and easily understood]~~ summary ~~that~~ [of]:

(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) [~~1~~] the department's procedures for conducting an investigation of alleged child abuse or neglect, including:

(a) [~~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) [~~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) [~~2~~] 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) [~~3~~] 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) [~~4~~] the person's right to seek legal counsel;

(v) [~~5~~] references to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions; and

(vi) [~~6~~] the process the person may use to acquire access to the child if the child is removed from the home;

(2) 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; and

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

(B) informs the parent or other person of a location that is available to the parent or other person to submit the informa-

tion in the form 24 hours a day either in person or by facsimile machine or e-mail; and

(3) an informational manual required by Section 261.3071.

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

The Department of Family and Protective Services shall develop the proposed child placement resources form required to be provided under Section 261.307, Family Code, as amended by this section, not later than November 1, 2005.

The Department of Family and Protective Services shall provide the proposed child placement resources form required under Section 261.307, Family Code, as amended by this section, to the parent or other person having legal custody of a child who is the subject of an investigation of abuse or neglect that is commenced on or after November 1, 2005.

SB 6 ADDS THIS SECTION

§ 261.3071. Informational Manuals.

(a) In this section, "relative caregiver" and "designated caregiver" have the meanings assigned those terms by Section 264.751.

(b) The department shall develop and publish informational manuals that provide information for:

(1) a parent or other person having custody of a child who is the subject of an investigation under this chapter; and

(2) a person who is selected by the department to be the child's relative or designated caregiver.

(c) Information provided in the manuals must be in both English and Spanish and must include, as appropriate:

(1) useful indexes of information such as telephone numbers;

(2) the information required to be provided under Section 261.307(a)(1);

(3) information describing the rights and duties of a relative or designated caregiver; and

(4) information regarding the relative and other designated caregiver program under Subchapter I, Chapter 264.

SB 6 AMENDS THIS SECTION

§ 261.310. Investigation Standards.

(a) The department shall by rule develop and adopt ~~voluntary~~ standards for persons who investigate suspected child abuse or neglect at the state or local level. The standards shall encourage professionalism and consistency in the investigation of suspected child abuse or neglect.

(c) The professional training curriculum developed under this section shall include:

(1) information concerning:

(A) ~~(1)~~ physical abuse and neglect, including distinguishing physical abuse from ordinary childhood injuries;

(B) ~~(2)~~ psychological abuse and neglect;

(C) ~~(3)~~ available treatment resources; and

(D) ~~(4)~~ the incidence and types of reports of child abuse and neglect that are received by the investigating agencies, including information concerning false reports;

(2) **law-enforcement-style training, including training relating to forensic interviewing and investigatory techniques and the collection of physical evidence; and**

(3) **training regarding applicable federal law, including the Adoption and Safe Families Act of 1997 (Pub. L. No. 105-89) and the Child Abuse Prevention and Treatment Act (Pub. L. No. 93-247) and its subsequent amendments by the Keeping Children and Families Safe Act of 2003 (Pub. L. No. 108-36).**

(d) The standards shall ~~recommend~~:

(1) **recommend** that videotaped and audiotaped interviews ~~[with a suspected victim]~~ be uninterrupted;

(2) **recommend** a maximum number of interviews with and examinations of a suspected victim;

(3) **provide** procedures to preserve evidence, including the **original recordings of the intake telephone calls**, original notes, videotapes, and audiotapes, **for one year**; and

(4) **provide** that an investigator of suspected child abuse or neglect make a reasonable effort to locate and inform each parent of a child of any report of abuse or neglect relating to the child.

(e) The department, in conjunction with the Department of Public Safety, shall provide to the department's residential child-care facility licensing investigators advanced training in investigative protocols and techniques.

SB 6 ADDS THIS SECTION

§ 261.3101. Forensic Investigation Support.

The department shall, subject to the availability of money:

(1) employ or contract with medical and law enforcement professionals who shall be strategically placed throughout the state to provide forensic investigation support and to assist caseworkers with assessment decisions and intervention activities;

(2) employ or contract with subject matter experts to serve as consultants to department caseworkers in all aspects of their duties; and

(3) designate persons who shall act as liaisons within the department whose primary functions are to develop relationships with local law enforcement agencies and courts.

SB 6 AMENDS THIS SECTION

§ 261.3125. Child Safety Specialists [Investigations Coordinator].

(a) The department shall employ in each ~~of the department's administrative regions [region of the department for child protective services]~~ at least one child **safety specialist** ~~[protective services investigations coordinator]~~. The job responsibilities of the **child safety specialist** ~~[investigations coordinator]~~ must focus ~~[only]~~ on child abuse and neglect investigation issues, including reports of child abuse required by Section 261.101, to achieve a greater compliance with that section, and on assessing and improving the effectiveness of the department in providing for the protection of children in the region.

(b) The duties of a child **safety specialist** ~~[protective services investigations coordinator]~~ must include the duty to:

(1) conduct staff reviews and evaluations of cases determined to involve a high risk to the health or safety of a child, including cases of

abuse reported under Section 261.101, to ensure that risk assessment tools are fully and correctly used;

(2) review and evaluate ~~monitor~~ cases in which there have been multiple referrals to the department of child abuse or neglect involving the same family, child, or person alleged to have committed the abuse or neglect; and

(3) approve decisions and assessments related to investigations of cases of child abuse or neglect that involve a high risk to the health or safety of a child.

IS "COLOCATION" A WORD?

SB 6 ADDS THIS SECTION

§ 261.3126. Colocation of Investigators.

(a) In each county, to the extent possible, the department and the local law enforcement agencies that investigate child abuse in the county shall colocate in the same offices investigators from the department and the law enforcement agencies to improve the efficiency of child abuse investigations. With approval of the local children's advocacy center and its partner agencies, in each county in which a children's advocacy center established under Section 264.402 is located, the department shall attempt to locate investigators from the department and county and municipal law enforcement agencies at the center.

(b) A law enforcement agency is not required to comply with the colocation requirements of this section if the law enforcement agency does not have a full-time peace officer solely assigned to investigate reports of child abuse and neglect.

(c) If a county does not have a children's advocacy center, the department shall work with the local community to encourage one as provided by Section 264.402.

HB 1575 AMENDS THIS SECTION

§ 261.405. Investigations in Juvenile Justice Programs and Facilities.

(e) As soon as practicable after a child is taken into custody or placed in a juvenile justice facility or juvenile justice program, the

facility or program shall provide the child's parents with:

(1) information regarding the reporting of suspected abuse, neglect, or exploitation of a child in a juvenile justice facility or juvenile justice program to the Texas Juvenile Probation Commission; and

(2) the commission's toll-free number for this reporting.

HB 1970 AMENDS THIS SECTION

§ 261.406. Investigations in Schools.

(b) The department shall send a written report of the department's investigation, as appropriate, to the Texas Education Agency, the agency responsible for teacher certification, the local school board or the school's governing body, **the superintendent of the school district**, and the school principal or director, unless the principal or director is alleged to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. Section 261.201(b) applies to the release of confidential information relating to the investigation of a report of abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

The change in law made by this Act to Section 261.406, Family Code, applies only to a report of an investigation by the Department of Family and Protective Services that is prepared on or after the effective date of this Act. A report prepared before the effective date of this Act is governed by the law in effect at the time the report was completed, and the former law is continued in effect for that purpose.

SB 6 AMENDS THIS SECTION

§ 261.410. Report of Abuse By Other Children.

(a) In this section:

(1) "Physical abuse" means:

(A) physical injury that results in substantial harm to the child requiring emergency medical treatment and excluding

an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; or

(B) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child.

(2) "Sexual abuse" means:

(A) sexual conduct harmful to a child's mental, emotional, or physical welfare; or

(B) failure to make a reasonable effort to prevent sexual conduct harmful to a child.

(b) An agency that operates, licenses, certifies, or registers a facility shall require a residential child-care facility to report each incident of physical or sexual abuse committed by a child against another child.

(c) Using information received under Subsection (b), the agency that operates, licenses, certifies, or registers a facility shall, subject to the availability of funds, compile a report that includes information:

(1) regarding the number of cases of physical and sexual abuse committed by a child against another child;

(2) identifying the residential child-care facility;

(3) regarding the date each allegation of abuse was made;

(4) regarding the date each investigation was started and concluded;

(5) regarding the findings and results of each investigation; and

(6) regarding the number of children involved in each incident investigated.

CHAPTER 262. PROCEDURES IN SUIT BY GOVERNMENTAL ENTITY TO PROTECT HEALTH AND SAFETY OF CHILD

HB 164 AMENDS THIS SECTION

§ 262.104. Taking Possession of a Child in Emergency Without a Court Order.

(a) If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective [and Regulatory] Services, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions, only:

* * *

(b) An authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child under Subsection (a) on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permit-

ted the child to remain on premises used for the manufacture of methamphetamine.

This Act is effective AUGUST 1, 2005.

HB 798 & SB 6 AMEND THIS SECTION— IDENTICAL TEXT

§ 262.1041. Release of Child by Law Enforcement or Juvenile Probation Officer.

(a) A law enforcement or juvenile probation officer who takes possession of a child under this chapter may release the child to:

(1) a child-placing agency licensed by the Department of Family and Protective Services under Chapter 42, Human Resources Code, if the agency is authorized by the department to take possession of the child;

(2) the Department of Family and Protective Services; or

(3) any other person authorized by law to take possession of the child.

(b) A child-placing agency or other authorized person who takes possession of a child under this section shall:

(1) immediately notify the Department of Family and Protective Services that the agency or other authorized person has taken possession of the child; and

(2) with the assistance of the law enforcement or juvenile probation officer who releases the child to the agency or other authorized person, complete a form prescribed by the Department of Family and Protective Services that contains basic information regarding the child and the circumstances under which the officer took possession of the child and promptly submit the completed form to the department.

[H.B. 798] This Act is effective June 17, 2005.

[S.B. 6] This Act is effective September 1, 2005.

FIRST, LET'S TRY TO FIND A CARE-TAKER OTHER THAN THE STATE AS QUICKLY AS POSSIBLE

SB 6 ADDS THIS SECTION

§ 262.114. Evaluation of Identified Relatives and Other Designated Individuals; Placement.

(a) Before a full adversary hearing under Subchapter C, the Department of Family and Protective Services must perform a background and criminal history check of the relatives or other designated individuals identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307. The department shall evaluate each person listed on the form to determine the relative or other designated individual who would be the most appropriate substitute caregiver for the child and must complete a home study of the most appropriate substitute caregiver, if any, before the full adversary hearing. Until the department identifies a relative or other designated individual qualified to be a substitute caregiver, the department must continue to explore substitute caregiver options. The time frames in this subsection do not apply to a relative or other designated individual located in another state.

(b) The department may place a child with a relative or other designated individual identified on the proposed child placement re-

sources form if the department determines that the placement is in the best interest of the child. The department may place the child with the relative or designated individual before conducting the background and criminal history check or home study required under Subsection (a). The department shall provide a copy of an informational manual required under Section 261.3071 to the relative or other designated caregiver at the time of the child's placement.

WHAT TO DO WITH POSSIBLE PLACEMENT INFORMATION

SB 6 AMENDS THIS SECTION

§ 262.201. Full Adversary Hearing; Findings of the Court.

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall issue an appropriate temporary order under Chapter 105. The court shall require each parent, alleged father, or relative of the child before the court to **submit the proposed child placement resources form provided under Section 261.307, if the form has not been previously provided, and** provide the Department of Family and Protective ~~and Regulatory~~ Services with information necessary to locate any other absent parent, alleged father, or relative of the child. **The court shall inform each parent, alleged father, or relative of the child before the court that the person's failure to submit the proposed child placement resources form will not delay any court proceedings relating to the child.** The court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment. If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order under Title 4 for the child. In this subsection, "family violence" has the meaning assigned by Section 71.004.

The change in law made by this section to Subsection (c), Section 262.201, Family Code, applies only to a full adversary hearing that occurs on or after November 1, 2005. A full adversary hearing that occurs before that date is governed by the law as it existed before amendment by this section, and the former law is continued in effect for that purpose.

SB 6 AMENDS THIS SECTION

§ 262.2015. Aggravated Circumstances.

(b) The court may find under Subsection (a) that a parent has subjected the child to aggravated circumstances if:

* * *

(7) the parent's parental rights with regard to two other children have been involuntarily terminated.

HB 2331 ADDS THIS SECTION

§ 262.308. Confidentiality.

(a) All identifying information, documentation, or other records regarding a person who voluntarily delivers a child to a designated emergency infant care provider under this subchapter is confidential and not subject to release to any individual or entity except as provided by Subsection (b).

(b) Any pleading or other document filed with a court under this subchapter is confidential, is not public information for purposes of Chapter 552, Government Code, and may not be released to a person other than to a party in a suit regarding the child, the party's attorney, or an attorney ad litem or guardian ad litem appointed in the suit.

(c) In a suit concerning a child for whom the Department of Family and Protective Services assumes care, control, and custody under this subchapter, the court shall close the hearing to the public unless the court finds that the interests of the child or the public would be better served by opening the hearing to the public.

(d) Unless the disclosure, receipt, or use is permitted by this section, a person commits an offense if the person knowingly discloses, receives, uses, or permits the use of information derived from records or files described by this section or knowingly discloses identifying information concerning a person who voluntarily delivers a child to a designated emergency infant care provider. An offense under this subsection is a Class B misdemeanor.

The change in law made by this Act applies to a child for whom the Department of Family and Protective Services assumes responsibility under Subchapter D, Chapter 262, Family Code, as amended by this Act, regardless of whether the department assumed responsibility for the child before, on, or after the effective date of this Act.

HB 2331 ADDS THIS SECTION

§ 262.309. Search For Relatives Not Required.

The Department of Family and Protective Services is not required to conduct a search for the relatives of a child for whom the department assumes care, control, and custody under this subchapter.

The change in law made by this Act applies to a child for whom the Department of Family and Protective Services assumes responsibility under Subchapter D, Chapter 262, Family Code, as amended by this Act, regardless of whether the department assumed responsibility for the child before, on, or after the effective date of this Act.

CHAPTER 263. REVIEW OF PLACEMENT OF CHILDREN UNDER CARE OF DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES (sic)

SB 6 AMENDS THIS SECTION

§ 263.001. Definitions.

(a) In this chapter:

(1) "Department" means the Department of Family and Protective [and Regulatory] Services.

BILINGUALISM FULLY RECOGNIZED IN TEXAS

SB 6 AMENDS THIS SECTION

§ 263.102. Service Plan; Contents.

(a) The service plan must:

(1) be specific;

(2) be in writing in a language that the parents understand, or made otherwise available;

* * *

(8) state any specific skills or knowledge that the child's parents must acquire or learn, as well as any behavioral changes the parents must exhibit, to achieve the plan goal;

(9) state the actions and responsibilities that are necessary for the child's parents to take to ensure that the child attends school and maintains or improves the child's academic compliance;

(10) state the name of the person with the department or other agency whom the child's parents may contact for information relating to the child if other than the person preparing the plan; and

(11) [(9)] prescribe any other term or condition that the department or other agency determines to be necessary to the service plan's success.

(d) The department or other authorized entity must write the service plan in a manner that is clear and understandable to the parent in order to facilitate the parent's ability to follow the requirements of the service plan.

(e) Regardless of whether the goal stated in a child's service plan as required under Subsection (a)(5) is to return the child to

the child's parents or to terminate parental rights and place the child for adoption, the department shall concurrently provide to the child and the child's family, as applicable:

(1) time-limited family reunification services as defined by 42 U.S.C. Section 629a for a period not to exceed the period within which the court must render a final order in or dismiss the suit affecting the parent-child relationship with respect to the child as provided by Subchapter E; and

(2) adoption promotion and support services as defined by 42 U.S.C. Section 629a.

The changes in law made by Section 263.102 and Subsection (c), Section 263.202, Family Code, as amended by this section, apply only to a child placed in the custody of the Department of Family and Protective Services on or after the effective date of this section. A child placed in the custody of the department before the effective date of this section is governed by the law in effect on the date the child was placed in the department's custody, and the former law is continued in effect for that purpose.

SB 6 AMENDS THIS SECTION

§ 263.201. Status Hearing; Time.

(c) The court shall require each parent, alleged father, or relative of the child before the court to submit the proposed child placement resources form provided under Section 261.307 at the status hearing, if the form has not previously been submitted.

The change in law made by this section to Section 263.201, Family Code, applies only to a status hearing that occurs on or after November 1, 2005. A status hearing that occurs before that date is governed by the law as it existed before amendment by this section, and the former law is continued in effect for that purpose.

SB 6 AMENDS THIS SECTION

§ 263.202. Status Hearing; Findings.

(b) Except as provided by Subsection (e), a [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 or other agency filed under this chapter for reason-

ableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

* * *

(c) The court shall advise the parties that progress under the service plan will be reviewed at all subsequent hearings, **including a review of whether the parties have acquired or learned any specific skills or knowledge stated in the service plan.**

(e) **At the status hearing, the court shall make a finding as to whether the court has identified the individual who has the right to consent for the child under Section 266.003.**

The changes in law made by Section 263.102 and Subsection (c), Section 263.202, Family Code, as amended by this section, apply only to a child placed in the custody of the Department of Family and Protective Services on or after the effective date of this section. A child placed in the custody of the department before the effective date of this section is governed by the law in effect on the date the child was placed in the department's custody, and the former law is continued in effect for that purpose.

HB 2331 REPEALS THIS SUBSECTION

Section 263.3025(d), Family Code, is repealed.

§ 263.3025. Permanency Plan.

~~[(d) In preparing the permanency plan for a child taken into possession under Subchapter D, Chapter 262, the department is not required to conduct a search for or give preference to the child's relatives for purposes of permanent placement if the department does not have information concerning the child's identity or the identities of the child's parents.]~~

This Act is effective Sept. 1, 2005.

HB 307 AMENDS THIS SECTION

§ 263.303. Permanency Progress Report.

(a) Not later than the 10th day before the date set for each permanency hearing other than the first permanency hearing, the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, **the child's guardian ad litem,** and the child's

volunteer advocate a permanency progress report unless the court orders a different period for providing the report.

The changes in law made by this Act to Chapter 107, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit filed before the effective date of this Act 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.

ONE-YEAR DROP-DEAD DISMISSAL GETS NEW TEETH—ARE “EXTRAORDINARY CIRCUMSTANCES” IN THE EYE OF THE BEHOLDER?

SB 6 AMENDS THIS SECTION

§ 263.401. Dismissal After One Year; Extension.

(b) The court may **not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain** the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a)~~[, if the court finds that continuing the appointment of the department as temporary managing conservator is in the best interest of the child]~~. If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules the new date for dismissal of the suit not later than the 180th day after the time described by Subsection (a);

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets a final hearing on a date that allows the court to render a final order before the required date for dismissal of the suit under this subsection.

REINING IN APPELLATE REVERSALS

HB 409 AMENDS THIS SECTION

§ 263.405. Appeal of Final Order.

(i) The appellate court may not consider any issue that was not specifically presented to the trial court in a timely filed statement of the points on which the party intends to appeal or in a statement combined with a motion for new trial. For purposes of this subsection, a claim that a judicial decision is contrary to the evidence or that the evidence is factually or legally insufficient is not sufficiently specific to preserve an issue for appeal.

Section 263.405(i), Family Code, as added by this Act, applies only to an appeal of a final order under Subchapter E, Chapter 263, Family Code, filed on or after the effective date of this Act. An appeal of a final order under Subchapter E, Chapter 263, Family Code, filed before the effective date of this Act is governed by the law in effect on the date the appeal was filed, and the former law is continued in effect for that purpose.

BABY MOSES SERIOUS REMODEL

HB 2331 AMENDS THIS SECTION

§ 263.407. Final Order Appointing Department as Managing Conservator of Certain Abandoned Children; Termination of Parental Rights.

(a) There ~~[In a suit to terminate the parent-child relationship, there]~~ is a rebuttable presumption that a parent who delivers a child to a designated emergency infant care provider in accordance with Subchapter D, Chapter 262;

(1) is the child's biological parent; and

(2) intends to relinquish parental rights and~~[;]~~ consents to the termination of parental rights with regard to the child.

(a-1) A party that seeks to rebut a presumption in Subsection (a) may do so at any time before the parent-child relationship is terminated with regard to the child.

(c) Before filing a petition to terminate the parental rights with regard to a child taken into the department's custody under Section 262.303, the department must:

(1) verify with the National Crime Information Center and state and local law

enforcement agencies that the child is not a missing child; and

(2) obtain a certificate of the search of the paternity registry under Subchapter E, Chapter 160, not earlier than the date the department estimates to be the 30th day after the child's date of birth.

SB 6 AMENDS THIS SECTION

§ 263.502. Placement Review Report.

(c) The placement review report must:

(1) evaluate whether the child's current placement is appropriate for meeting the child's needs;

(2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) contain a discharge plan for a child who is at least 16 years of age that identifies ~~[identify]~~ **the services and specific tasks that are needed to assist the** ~~[a]~~ **child** ~~[who is at least 16 years of age]~~ **in making the transition from substitute care to adult** ~~[independent]~~ **living and describes the services that are available through the Preparation for Adult Living Program operated by the department** ~~[if the services are available in the community];~~

(4) evaluate whether the child's current educational placement is appropriate for meeting the child's academic needs;

(5) identify other plans or services that are needed to meet the child's special needs or circumstances; and

(6) ~~[;]~~ describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption, including efforts to provide adoption promotion and support services as defined by 42 U.S.C. Section 629a and other efforts consistent with the federal Adoption and Safe Families Act of 1997 (Pub. L. No. 105-89).

In implementing the provisions of Subdivision (3), Subsection (c), Section 263.502, Family Code, as amended by this section, the Department of Family and Protective Services shall, to the extent that funding is appropriated for this purpose, contract with outside entities to assist in the discharge planning process.

CHAPTER 264. CHILD WELFARE SERVICES

IS THERE NO END TO SENATE BILL 6?

SB 6 AMENDS THIS SECTION

§ 264.001. Definitions [~~Definition~~].
In this chapter:
(1) "Department" [~~,"department"~~] means the Department of Family and Protective [~~and Regulatory~~] Services.
(2) "Commission" means the Health and Human Services Commission.
(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
(4) "Residential child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

SB 6 ADDS THIS SECTION

§ 264.0091. Use of Teleconferencing and Videoconferencing Technology.
Subject to the availability of funds, the department, in cooperation with district and county courts, shall expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts and other individuals in court proceedings.

SB 6 ADDS THIS SECTION

§ 264.013. Exchange of Information With Other States.
Subject to the availability of funds, the department shall enter into agreements with other states to allow for the exchange of information relating to a child for whom the department is or was the managing conservator. The information may include the child's health passport and education passport.

HB 614 & SB 6 AMEND THIS SECTION—
DIFFERENT TEXT

§ 264.101. Foster Care Payments.
[HB 614] (a-1) The department shall continue to pay the cost of foster care for a child for whom the department provides care, including medical care, until the later of:
(1) the date the child attains the age of 18; or
(2) the date the child graduates from high school or ceases to be enrolled in a secondary school in a program leading toward a high school diploma.

[HB 614] (d) The executive commissioner of the Health and Human Services Commission [~~Board of Protective and Regulatory Services~~] may adopt rules that establish criteria and guidelines for the payment of foster care, including medical care, for a child and for providing care for a child after the child becomes 18 years of age if the child is regularly attending [~~high school,~~] an institution of higher education[;] or a vocational or technical program.

[S.B. 6] (d-1) The executive commissioner may adopt rules that prescribe the maximum amount of state money that a residential child-care facility may spend on nondirect residential services, including administrative services. The commission shall recover the money that exceeds the maximum amount established under this subsection.

[H.B. 614] The change in law made by this Act applies only to a child who is in foster care on or after the effective date of this Act.

This Act is effective May 27, 2005.

SB 6 AMENDS THIS SECTION

§ 264.106. Required Contracts For Substitute Care and Case Management Services.
(a) In this section:
(1) "Case management services" means the provision of case management services to a child for whom the department has been appointed temporary or permanent managing conservator, including caseworker-child

visits, family visits, the convening of family group conferences, the development and revision of the case plan, the coordination and monitoring of services needed by the child and family, and the assumption of court-related duties, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates.

(2) "Independent administrator" means an independent agency selected through a competitive procurement process to:

(A) secure, coordinate, and manage substitute care services and case management services in a geographically designated area of the state; and

(B) ensure continuity of care for a child referred to the administrator by the department and the child's family from the day a child enters the child protective services system until the child leaves the system.

(3) "Permanency services" means services, other than family-based safety services, provided to secure a child's safety, permanency, and well-being, including substitute care services, family reunification services, adoption and postadoption services, preparation for adult living services, and case management services.

(4) "Substitute care provider" means a child-care institution or a child-placing agency, as defined by Section 42.002, Human Resources Code.

(5) "Substitute care services" means services provided to or for children in substitute care and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family preservation, independent living, emergency shelter, residential group care, foster care, therapeutic foster care, and post-placement supervision, including relative placement. The term does not include the regulation of facilities under Subchapter C, Chapter 42, Human Resources Code.

(b) The department shall, in accordance with Section 45.004, Human Resources Code:

(1) assess the need for substitute care and case management services throughout the state; ~~and~~

(2) either contract directly with private agencies as part of regional community-centered networks for the provision of all necessary substitute care and case management ~~[substitute care providers only to the extent necessary to meet the need for those]~~ services or use an independent administrator to contract for those services;

(3) contract with an independent administrator, if cost beneficial, to coordinate and manage all services needed for children in the temporary or permanent managing conservatorship of the department in a designated geographic area;

(4) monitor the quality of services for which the department and each independent administrator contract under this section; and

(5) ensure that the services are provided in accordance with federal law and the laws of this state, including department rules and rules of the Department of State Health Services and the Texas Commission on Environmental Quality.

(c) An independent administrator may not:

(1) directly provide substitute care services; or

(2) be governed by a board that has a member who has a financial interest in a substitute care or case management provider with whom the independent administrator subcontracts.

(d) Administrative services to be provided by an independent administrator include:

(1) recruiting and subcontracting with community-based substitute care and case management providers to ensure a full array of services in defined geographic areas;

(2) managing placements and making referrals for placement based on department-approved protocols;

(3) monitoring services delivered by subcontractors;

(4) providing training and technical assistance to contract providers;

(5) maintaining data systems that support tracking and reporting key performance and outcome data; and

(6) ensuring accountability for achieving defined client and system outcomes.

~~(e) [(b) Before contracting with a substitute care provider, the department shall determine whether:~~

~~[(1) community resources are available to support children placed under the provider's care; and~~

~~[(2) the appropriate public school district has sufficient resources to support children placed under the provider's care if the children will attend public school.~~

~~[(e)]~~ In addition to the requirements of Section 40.058(b), Human Resources Code, a contract with **an independent administrator** [~~a substitute care provider~~] must include provisions that:

(1) enable the department to monitor the effectiveness of the [~~provider's~~] services; [~~and~~]

(2) **specify performance outcomes;**

(3) authorize the department to terminate the contract or impose sanctions for a violation of a provision of the contract that specifies performance criteria;

(4) **ensure that an independent administrator may not refuse to accept a client who is referred for services or reject a client who is receiving services unless the department has reviewed the independent administrator's decision and approved the decision in writing;**

(5) **authorize the department, an agent of the department, and the state auditor to inspect all books, records, and files maintained by an independent administrator relating to the contract; and**

(6) the department determines are necessary to ensure accountability for the delivery of services and for the expenditure of public funds.

(f) A contract with an independent administrator for substitute care and case management services under Subsection (b)(2) must include department-approved provisions that:

(1) enable the independent administrator and the department to:

(A) monitor the effectiveness of substitute care and case management services; and

(B) specify performance standards and authorize termination of the contract for cause;

(2) describe how performance is linked to reimbursement amounts or schedules to provide incentives for desired results;

(3) require all independent administrators and private contractors to disclose to the department any information that may indicate an actual or potential conflict of interest with the commission, the department, or another health and human services agency, including information regarding actual or potential related-party transactions, relationships, interests, or business history, and any other factor that may indicate an actual or potential conflict of interest;

(4) authorize the independent administrator, an agent of the independent administrator, the department, an agent of the department, and the state auditor to inspect all books, records, and files maintained by a contractor relating to the contract; and

(5) the department determines are necessary to ensure accountability for the delivery of services and for the expenditure of public funds.

(g) ~~[(d)]~~ In determining whether to contract with a substitute care provider or an independent administrator, the department shall consider the provider's or administrator's performance under any previous contract [~~for substitute care services~~] between the department and the provider or administrator.

(h) A contract under this section does not affect the rights and duties of the department in the department's capacity as the temporary or permanent managing conservator of a child.

(i) Except as provided by Subsections (j) and (k) and notwithstanding any other law, on and after September 1, 2011, the department may not directly provide substitute care and case management services for children for whom the department has been appointed temporary or permanent managing conservator.

(j) On and after September 1, 2011, the department may provide substitute care and case management services in an emergency. The executive commissioner shall adopt rules describing the circumstances in which the department may provide those services.

(k) The department may provide substitute care and case management services as a provider of last resort in any region of the state in which the department or an independent administrator contracting with the department is unable to contract with a private agency to provide those services

~~[(e) In this section, "substitute care provider" means a person who provides residential care for children for 24 hours a day, including:~~

~~[(1) a child care institution, as defined by Section 42.002, Human Resources Code;~~

~~[(2) a child placing agency, as defined by Section 42.002, Human Resources Code;~~

~~[(3) a foster group home or foster family home, as defined by Section 42.002, Human Resources Code; and~~

~~[(4) an agency group home or agency home, as defined by Section 42.002, Human Resources Code, other than an agency group home, agency home, or a foster home verified or certified by the department].~~

SB 6 ADDS THIS SECTION

§ 264.1062. Evaluation of Independent Administrators.

The department shall develop and implement a comprehensive multidisciplinary team to monitor and evaluate the performance of independent administrators. The team must consist of specialized staff who can enable the department to measure critical dimensions of community-based organization performance, obtained through the quality assurance functions of the independent administrator, including:

(1) achievement of client and system outcomes;

(2) compliance with contractual terms and conditions; and

(3) any history of the community-based organization's noncompliance with the department's licensing standards.

SB 6 ADDS THIS SECTION

§ 264.1063. Monitoring Performance of Substitute Care and Case Management Providers.

(a) The department, in consultation with private entities under contract with either an independent administrator or the department to provide substitute care or case management services, shall establish a quality assurance program that uses comprehensive, multitiered assurance and improvement systems based, subject to the availability of funds, on real-time data to evaluate performance.

(b) The contract performance outcomes specified in a contract under Section 264.106 must be consistent with the fiscal goals of privatizing substitute care and case management services and must be within the contractor's authority to deliver. The contract must clearly define the manner in which the substitute care or case management provider's performance will be measured and identify the information sources the department and, if applicable, the independent administrator will use to evaluate the performance.

SB 6 AMENDS THIS SECTION

§ 264.107. Placement of Children.

(c) The contract between the department and an independent administrator or other authorized entity must require, not later than September 1, 2009, the use of real-time technology in the independent administrator's or other authorized entity's placement system to screen possible placement options for a child and match the child's needs with the most qualified providers with vacancies.

(d) The department shall institute a quality assurance system in monitoring the independent administrators or other authorized entities to ensure that placement decisions are reliable and are made in a consistent manner.

(e) In making placement decisions, an independent administrator or other authorized entity shall use clinical protocols to match a child to the most appropriate placement resource.

(f) The department may create a regional advisory council in a region to assist the department and independent administrator or other authorized entity in:

(1) assessing the need for resources in the region; and

(2) locating substitute care services in the region for hard-to-place children.

SB 6 AMENDS THIS SECTION

§ 264.1075. Assessing Needs of Child [~~Use of Assessment Services~~].

(a) On removing a child from the child's home [~~Before placing a child in substitute care~~], the department shall use assessment services provided by a child-care facility, a [~~or~~] child-placing agency, **or the child's medical home during the initial substitute care placement. The assessment may be used** [~~in accordance with Section 42.0425, Human Resources Code,~~] to determine the most appropriate substitute care placement for the child, if needed.

(b) As soon as possible after a child begins receiving foster care under this subchapter, the department shall assess whether the child has a developmental disability or mental retardation. The commission shall establish the procedures that the department must use in making an assessment under this subsection. The procedures may include screening or participation by:

(1) a person who has experience in childhood developmental disabilities or mental retardation;

(2) a local mental retardation authority; or

(3) a provider in a county with a local child welfare board.

HB 2018 RENUMBERS, REENACTS SECTION—NONSUBSTANTIVE AMENDMENT

§ 264.115 [~~264.113~~]. **Confidentiality of Pleadings.**

SB 6 ADDS THIS SECTION

§ 264.116. Texas Foster Grandparent Mentors.

(a) The department shall make the active recruitment and inclusion of senior citi-

zens a priority in ongoing mentoring initiatives.

(b) An individual who volunteers as a mentor is subject to state and national criminal background checks in accordance with Sections 411.087 and 411.114, Government Code.

(c) The department shall require foster parents or employees of residential child-care facilities to provide appropriate supervision over individuals who serve as mentors during their participation in the mentoring initiative.

(d) Chapter 2109, Government Code, applies to the mentoring initiative described by this section.

SB 6 ADDS THIS SECTION

§ 264.117. Notice To Attorney Ad Litem.

(a) The department shall notify the attorney ad litem for a child in the conservatorship of the department about each event involving the child that the department reports in the child's case file.

(b) The department shall give a child's attorney ad litem written notice at least 48 hours before the date the department changes the child's residential care provider. The department may change the child's residential care provider without notice if the department determines that an immediate change is necessary to protect the child.

SB 6 ADDS THIS SECTION

§ 264.118. Annual Survey.

(a) The department shall conduct an annual random survey of a sample of children from each region of the state who are at least 14 years of age and who receive substitute care services. The survey must include questions regarding:

(1) the quality of the substitute care services provided to the child;

(2) any improvements that could be made to better support the child; and

(3) any other factor that the department considers relevant to enable the department to identify potential program enhancements.

(b) The identity of each child participating in a department survey is confidential and not subject to public disclosure under Chapter 552, Government Code. The department shall adopt procedures to ensure that the identity of each child participating in a department survey remains confidential.

The Department of Family and Protective Services shall implement the provisions of Section 264.116, Family Code, as added by this section, not later than June 1, 2006.

SB 6 ADDS THIS SECTION

§ 264.121. Preparation For Adult Living Program.

(a) The department shall address the unique challenges facing foster children in the conservatorship of the department who must transition to independent living by:

(1) expanding efforts to improve discharge planning and increasing the availability of transitional family group decision-making to all youth age 16 or older in the department's permanent managing conservatorship;

(2) coordinating with the Health and Human Services Commission to obtain authority, to the extent allowed by federal law, the state Medicaid plan, the Title IV-E state plan, and any waiver or amendment to either plan, necessary to:

(A) extend foster care eligibility and transition services for youth up to age 21 and develop policy to permit eligible youth to return to foster care as necessary to achieve the goals of the Preparation for Adult Living Program; and

(B) extend Medicaid coverage for foster care youth and former foster care youth up to age 21 with a single application at the time the youth leaves foster care; and

(3) entering into cooperative agreements with the Texas Workforce Commission and local workforce development boards to further the objectives of the Preparation for Adult Living Program. The department, the Texas Workforce Commission, and the local workforce development boards shall ensure that services are prioritized and targeted to meet the needs of foster care and former foster care children and that such services

will include, where feasible, referrals for short-term stays for youth needing housing.

(b) In this section "local workforce development board" means a local workforce development board created under Chapter 2308, Government Code.

DO YOU WANT MORE ADR? THEN TRY FAMILY GROUP COUNSELING

SB 6 ADDS THIS SECTION

§ 264.2015. Family Group Conferencing.

The department may collaborate with the courts and other appropriate local entities to develop and implement family group conferencing as a strategy for promoting family preservation and permanency for children.

SB 6 AMENDS THIS SECTION

§ 264.203. Required Participation.

(c) If the person ordered to participate in the services fails to follow the court's order, the court may impose appropriate sanctions in order to protect the health and safety of the child, including the removal of the child as specified by Chapter 262 [~~community service as a sanction for contempt~~].

SB 6 ADDS THIS SECTION

§ 264.204. Community-Based Family Services.

(a) The department shall administer a grant program to provide funding to community organizations, including faith-based or county organizations, to respond to:

(1) low-priority, less serious cases of abuse and neglect; and

(2) cases in which an allegation of abuse or neglect of a child was unsubstantiated but involved a family that has been previously investigated for abuse or neglect of a child.

(b) The executive commissioner shall adopt rules to implement the grant program, including rules governing the submission and approval of grant requests and the cancellation of grants.

(c) To receive a grant, a community organization whose grant request is approved

must execute an interagency agreement or a contract with the department. The contract must require the organization receiving the grant to perform the services as stated in the approved grant request. The contract must contain appropriate provisions for program and fiscal monitoring.

(d) In areas of the state in which community organizations receive grants under the program, the department shall refer low-priority, less serious cases of abuse and neglect to a community organization receiving a grant under the program.

(e) A community organization receiving a referral under Subsection (d) shall make a home visit and offer family social services to enhance the parents' ability to provide a safe and stable home environment for the child. If the family chooses to use the family services, a case manager from the organization shall monitor the case and ensure that the services are delivered.

(f) If after the home visit the community organization determines that the case is more serious than the department indicated, the community organization shall refer the case to the department for a full investigation.

(g) The department may not award a grant to a community organization in an area of the state in which a similar program is already providing effective family services in the community.

(h) For purposes of this section, a case is considered to be a less serious case of abuse or neglect if:

(1) the circumstances of the case do not appear to involve a reasonable likelihood that the child will be abused or neglected in the foreseeable future; or

(2) the allegations in the report of child abuse or neglect:

(A) are general in nature or vague and do not support a determination that the child who is the subject of the report has been abused or neglected or will likely be abused or neglected; or

(B) if substantiated, would not be considered abuse or neglect under this chapter.

§ 264.2041. Cultural Awareness.

The department shall:

(1) develop and deliver cultural competency training to all service delivery staff;

(2) increase targeted recruitment efforts for foster and adoptive families who can meet the needs of children and youth who are waiting for permanent homes;

(3) target recruitment efforts to ensure diversity among department staff; and

(4) develop collaborative partnerships with community groups, agencies, faith-based organizations, and other community organizations to provide culturally competent services to children and families of every race and ethnicity.

The Health and Human Services Commission and the Department of Family and Protective Services shall analyze data regarding child removals and other enforcement actions taken by the department during state fiscal years 2004 and 2005. Based on the analysis, the commission and the department shall determine whether enforcement actions were disproportionately initiated against any racial or ethnic group, in any area of the state, taking into account other relevant factors, including poverty, single-parent families, young-parent families, and any additional factor determined by other research to be statistically correlated with child abuse or child neglect.

The rate of enforcement actions shall be deemed disproportionate for a given racial or ethnic group if it is significantly different from the rate of enforcement actions against the population as a whole, taking into account other relevant factors.

Not later than January 1, 2006, the Health and Human Services Commission shall report the results of the analysis to the lieutenant governor, the speaker of the house of representatives, the presiding officer of each house and senate standing committee having jurisdiction over child protective services, and the Parental Advisory Committee created under Section 40.073, Human Resources Code, as added by this Act.

If the results of the analysis indicate that enforcement actions are initiated disproportionately against any racial or ethnic group, in any area of the state, taking into account other relevant factors, the Health and Human Services Commission and Department of Family and Protective Services shall:

(1) evaluate the policies and procedures the department uses in deciding to take enforcement actions to determine why racial or ethnic disparities exist;

(2) develop and implement a remediation plan to prevent racial or ethnic disparities not justified by other external factors from affecting the decision to initiate enforcement actions; and

(3) not later than July 1, 2006, submit a report to the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each house and senate standing committee having jurisdiction over child protective services that explains:

- (A) the evaluation of policies and procedures;
- and
- (B) the remediation plan.

SB 6 AMENDS THIS SECTION

§ 264.502. Committee.

(b) The members of the committee who serve under Subsections (a)(1) through (3) shall select the following additional committee members:

- (1) a criminal prosecutor involved in prosecuting crimes against children;
- (2) a sheriff;
- (3) a justice of the peace;
- (4) a medical examiner;
- (5) a police chief;
- (6) a pediatrician experienced in diagnosing and treating child abuse and neglect;
- (7) a child educator;
- (8) a child mental health provider;
- (9) a public health professional;
- (10) a child protective services specialist;
- (11) a sudden infant death syndrome family service provider;
- (12) a neonatologist;
- (13) a child advocate; ~~and~~
- (14) a chief juvenile probation officer; **and**
- (15) a child abuse prevention specialist.

SB 6 AMENDS THIS SECTION

§ 264.503. Purpose and Duties of Committee and Specified State Agencies.

(b) To ensure that the committee achieves its purpose, the department and the ~~[Texas]~~ Department of **State Health Services** shall perform the duties specified by this section.

- (c) The department shall:
- (1) recognize the creation and participation of review teams; **and**
 - (2) **work cooperatively with the committee and with individual child fatality review teams** ~~[promote and coordinate training to~~

~~assist the review teams in carrying out their duties;~~

~~[(3) assist the committee in developing model protocols for:~~

~~[(A) the reporting and investigating of child fatalities for law enforcement agencies, child protective services, justices of the peace and medical examiners, and other professionals involved in the investigations of child deaths;~~

~~[(B) the collection of data regarding child deaths; and~~

~~[(C) the operation of the review teams; and~~

~~[(4) develop and implement procedures necessary for the operation of the committee].~~

(d) The **Department of State Health Services** ~~[department]~~ shall:

(1) promote and coordinate training to assist the review teams in carrying out their duties;

(2) assist the committee in developing model protocols for:

(A) the reporting and investigating of child fatalities for law enforcement agencies, child protective services, justices of the peace and medical examiners, and other professionals involved in the investigations of child deaths;

(B) the collection of data regarding child deaths; and

(C) the operation of the review teams;

(3) develop and implement procedures necessary for the operation of the committee; and

(4) promote education of the public regarding the incidence and causes of child deaths, the public role in preventing child deaths, and specific steps the public can undertake to prevent child deaths.

(d-1) The committee shall enlist the support and assistance of civic, philanthropic, and public service organizations in the performance of the duties imposed under **Subsection (d)** ~~[this subsection].~~

(e) In addition to the duties under Subsection (d), the ~~[The Texas]~~ Department of **State Health Services** shall:

(1) collect data under this subchapter and coordinate the collection of data under this subchapter with other data collection activities; and

(2) perform annual statistical studies of the incidence and causes of child fatalities using the data collected under this subchapter.

(f) The committee shall issue **a report for each preventable child death. The report must include** ~~annual reports on the committee's activities, including~~ findings **related to the child's death, [and] recommendations on how to prevent similar deaths, and details surrounding the department's involvement with the child prior to the child's death** ~~[relating to each purpose and duty of the committee described by this section]~~. Not later than December 1 of each ~~even-numbered~~ year, the committee shall publish **a compilation of the reports published under this subsection during the year, [the report and] submit a copy of the compilation [report]** to the governor, lieutenant governor, ~~[and] speaker of the house of representatives, and department, and make the compilation available to the public. Not later than June 1 of each year, the department shall submit a written response on the compilation from the previous year to the committee, governor, lieutenant governor, and speaker of the house of representatives describing which of the committee's recommendations regarding the operation of the child protective services system the department will implement and the methods of implementation.~~

(g) The committee shall perform the functions and duties required of a citizen review panel under 42 U.S.C. Section 5106a(c)(4)(A).

SB 6 AMENDS THIS SECTION

§ 264.504. Meetings of Committee.

(c) Information identifying a deceased child, a member of the child's family, a guardian or caretaker of the child, or an alleged or suspected perpetrator of abuse or neglect of the child may not be disclosed during a public meeting. **On a majority vote of the committee members, the members shall remove from the committee any member who discloses information described by this subsection in a public meeting.**

SB 6 AMENDS THIS SECTION

§ 264.505. Establishment of Review Team.

(c) A review team may include:

- (1) a criminal prosecutor involved in prosecuting crimes against children;
- (2) a sheriff;
- (3) a justice of the peace or medical examiner;
- (4) a police chief;
- (5) a pediatrician experienced in diagnosing and treating child abuse and neglect;
- (6) a child educator;
- (7) a child mental health provider;
- (8) a public health professional;
- (9) a child protective services specialist;
- (10) a sudden infant death syndrome family service provider;
- (11) a neonatologist;
- (12) a child advocate; ~~[and]~~
- (13) a chief juvenile probation officer; **and**
- (14) **a child abuse prevention specialist.**

SB 6 AMENDS THIS SECTION

§ 264.509. Access to Information.

(b) On request of the presiding officer of a review team, the custodian of the relevant information and records relating to a deceased child shall provide those records to the review team **at no cost to the review team.**

SB 6 AMENDS THIS SECTION

§ 264.602. Contracts With Advocate Programs.

(e) **The department, in cooperation with the statewide organization with which the attorney general contracts under Section 264.603 and other interested agencies, shall support the expansion of court-appointed volunteer advocate programs into counties in which there is a need for the programs. In expanding into a county, a program shall work to ensure the independence of the program, to the extent possible, by establishing community support and accessing private funding from the community for the program.**

SUBCHAPTER I. RELATIVE AND OTHER DESIGNATED CAREGIVER PLACEMENT PROGRAM

§ 264.751. Definitions.

In this subchapter:

(1) "Designated caregiver" means an individual who has a longstanding and significant relationship with a child for whom the department has been appointed managing conservator and who:

(A) is appointed to provide substitute care for the child, but is not licensed or certified to operate a foster home, foster group home, agency foster home, or agency foster group home under Chapter 42, Human Resources Code; or

(B) is subsequently appointed permanent managing conservator of the child after providing the care described by Paragraph (A).

(2) "Relative" means a person related to a child by consanguinity as determined under Section 573.022, Government Code.

(3) "Relative caregiver" means a relative who:

(A) provides substitute care for a child for whom the department has been appointed managing conservator, but who is not licensed or certified to operate a foster home, foster group home, agency foster home, or agency foster group home under Chapter 42, Human Resources Code; or

(B) is subsequently appointed permanent managing conservator of the child after providing the care described by Paragraph (A).

§ 264.752. Relative and Other Designated Caregiver Placement Program.

(a) The department shall develop and procure a program to:

(1) promote continuity and stability for children for whom the department is appointed managing conservator by placing those children with relative or other designated caregivers; and

(2) facilitate relative or other designated caregiver placements by providing as-

sistance and services to those caregivers in accordance with this subchapter and rules adopted by the executive commissioner.

(b) To the extent permitted by federal law, the department shall use federal funds available under Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), to administer the program under this subchapter.

(c) The executive commissioner shall adopt rules necessary to implement this subchapter. The rules must include eligibility criteria for receiving assistance and services under this subchapter.

§ 264.753. Expedited Placement.

The department or other authorized entity shall expedite the completion of the background and criminal history check, the home study, and any other administrative procedure to ensure that the child is placed with a qualified relative or caregiver as soon as possible after the date the caregiver is identified.

§ 264.754. Investigation of Proposed Placement.

Before placing a child with a proposed relative or other designated caregiver, the department must conduct an investigation to determine whether the proposed placement is in the child's best interest.

§ 264.755. Caregiver Assistance Agreement.

(a) The department shall, subject to the availability of funds, enter into a caregiver assistance agreement with each relative or other designated caregiver to provide monetary assistance and additional support services to the caregiver. The monetary assistance and support services shall be based on a family's need, as determined by rules adopted by the executive commissioner.

(b) Monetary assistance provided under this section must include a one-time cash payment of not more than \$1,000 to the caregiver on the initial placement of a child or a sibling group. The cash payment must be provided on the initial placement of each child with the caregiver and is provided to assist the caregiver in purchasing essential child-care items such as furniture and clothing.

(c) Monetary assistance and additional support services provided under this section may include:

(1) case management services and training and information about the child's needs until the caregiver is appointed permanent managing conservator;

(2) referrals to appropriate state agencies administering public benefits or assistance programs for which the child, the caregiver, or the caregiver's family may qualify;

(3) family counseling not provided under the Medicaid program for the caregiver's family for a period not to exceed two years from the date of initial placement;

(4) if the caregiver meets the eligibility criteria determined by rules adopted by the executive commissioner, reimbursement of all child-care expenses incurred while the child is under 13 years of age, or under 18 years of age if the child has a developmental disability, and while the department is the child's managing conservator;

(5) if the caregiver meets the eligibility criteria determined by rules adopted by the executive commissioner, reimbursement of 50 percent of child-care expenses incurred after the caregiver is appointed permanent managing conservator of the child while the child is under 13 years of age, or under 18 years of age if the child has a developmental disability; and

(6) reimbursement of other expenses, as determined by rules adopted by the executive commissioner, not to exceed \$500 per year for each child.

§ 264.756. Assistance With Permanent Placement.

The department shall collaborate with the State Bar of Texas and local community partners to identify legal resources to assist relatives and other designated caregivers in obtaining conservatorship, adoption, or other permanent legal status for the child.

§ 264.757. Coordination With Other Agencies.

The department shall coordinate with other health and human services agencies, as defined by Section 531.001, Government Code, to provide assistance and services under this subchapter.

§ 264.758. Funds.

The department and other state agencies shall actively seek and use federal funds available for the purposes of this subchapter.

Not later than December 1, 2005, the executive commissioner of the Health and Human Services Commission shall adopt rules for implementing and administering the relative and other designated caregiver placement program under Subchapter I, Chapter 264, Family Code, as added by this section.

Not later than March 1, 2006, the Department of Family and Protective Services shall implement the relative and other designated caregiver placement program in accordance with Subchapter I, Chapter 264, Family Code, as added by this section.

As soon as possible after the effective date of this Act, the Department of Family and Protective Services shall take all necessary actions to apply for a federal waiver under Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), to use federal funds available under that title to implement the relative and other designated caregiver placement program under Subchapter I, Chapter 264, Family Code, as added by this section.

SB 6 ADDS THIS SUBCHAPTER

SUBCHAPTER J. FAMILY DRUG COURT PROGRAM

§ 264.801. Family Drug Court Program Defined.

In this subchapter, "family drug court program" means a program that has the following essential characteristics:

(1) the integration of substance abuse treatment services in the processing of civil cases in the child welfare system with the goal of family reunification;

(2) the use of a comprehensive case management approach involving department caseworkers, court-appointed case managers, and court-appointed special advocates to rehabilitate a parent who has had a child removed from the parent's care by the department because of suspected child abuse or neglect and who is suspected of substance abuse;

(3) early identification and prompt placement of eligible parents who volunteer to participate in the program;

(4) comprehensive substance abuse needs assessment and referral to an appropriate substance abuse treatment agency;

(5) a progressive treatment approach with specific requirements that a parent must

meet to advance to the next phase of the program;

(6) monitoring of abstinence through periodic alcohol or other drug testing;

(7) ongoing judicial interaction with program participants;

(8) monitoring and evaluation of program goals and effectiveness;

(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(10) development of partnerships with public agencies and community organizations.

§ 264.802. Authority To Establish Program.

The commissioners court of a county may establish a family drug court program for persons who:

(1) have had a child removed from their care by the department; and

(2) are suspected by the department or a court of having a substance abuse problem.

§ 264.803. Oversight.

(a) The lieutenant governor and the speaker of the house of representatives may

assign to appropriate legislative committees duties relating to the oversight of family drug court programs established under this subchapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a family drug court program established under this subchapter.

§ 264.804. Participant Payment for Treatment and Services.

A family drug court program may require a participant to pay the cost of all treatment and services received while participating in the program, based on the participant's ability to pay.

§ 264.805. Funding.

A county creating a family drug court under this chapter shall explore the possibility of using court improvement project funds to finance the family drug court in the county. The county shall also explore the availability of federal and state matching funds to finance the court.

CHAPTER 265. PREVENTION AND EARLY INTERVENTION SERVICES

SB 6 ADDS THIS SECTION

§ 265.004. Use of Evidence-Based Programs for at-Risk Families.

(a) To the extent that money is appropriated for the purpose, the department shall fund evidence-based programs offered by community-based organizations that are designed to prevent or ameliorate child abuse and neglect.

(b) The department shall place priority on programs that target children whose race or ethnicity is disproportionately represented in the child protective services system.

(c) The department shall periodically evaluate the evidence-based abuse and neglect prevention programs to determine the continued effectiveness of the programs.

CHAPTER 266. MEDICAL CARE AND EDUCATIONAL SERVICES
FOR CHILDREN IN FOSTER CARE

SB 6 ADDS THIS CHAPTER [FIRST OF TWO]

THE END IS IN SIGHT

* * *

§ 266.004. Consent For Medical Care.

(a) Medical care may not be provided to a child in foster care unless the person authorized by this section has provided consent.

(b) Except as provided by Section 266.010, the court may authorize the following persons to consent to medical care for a foster child:

(1) an individual designated by name in an order of the court, including the child's foster parent or the child's parent, if the parent's rights have not been terminated and the court determines that it is in the best interest of the parent's child to allow the parent to make medical decisions on behalf of the child; or

(2) the department or an agent of the department.

(c) If the person authorized by the court to consent to medical care is the department or an agent of the department, the department shall, not later than the fifth business day after the date the court provides authorization, file with the court and each party the name of the individual who will exercise the duty and responsibility of providing informed consent on behalf of the department. If that individual changes, the department shall file notice of the change with the court and each party not later than the fifth business day after the date of the change.

(d) A physician or other provider of medical care acting in good faith may rely on the representation by a person that the person has the authority to consent to the provision of medical care to a foster child as provided by Subsection (b).

(e) The department, a person authorized to consent to medical care under Subsection (b), the child's parent if the parent's

rights have not been terminated, a guardian ad litem or attorney ad litem if one has been appointed, or the person providing foster care to the child may petition the court for any order related to medical care for a foster child that the department or other person believes is in the best interest of the child. Notice of the petition must be given to each person entitled to notice under Section 263.301(b).

(f) If a physician who has examined or treated the foster child has concerns regarding the medical care provided to the foster child, the physician may file a letter with the court stating the reasons for the physician's concerns. The court shall provide a copy of the letter to each person entitled to notice under Section 263.301(b).

(g) On its own motion or in response to a petition under Subsection (e) or Section 266.010, the court may issue any order related to the medical care of a foster child that the court determines is in the best interest of the child.

(h) Notwithstanding Subsection (b), a person may not be authorized to consent to medical care provided to a foster child unless the person has completed a department-approved training program related to informed consent and the provision of all areas of medical care as defined by Section 266.001. This subsection does not apply to a parent whose rights have not been terminated unless the court orders the parent to complete the training.

(i) The person authorized under Subsection (b) to consent to medical care of a foster child shall participate in each appointment of the child with the provider of the medical care.

(j) Nothing in this section requires the identity of a foster parent to be publicly disclosed.

§ 266.005. Parental Notification Of Significant Medical Conditions.

(a) In this section, "significant medical condition" means an injury or illness that is life-threatening or has potentially serious long-term health consequences, including hospitalization for surgery or other procedures, except minor emergency care.

(b) Except as provided by Subsection (c), the department shall make reasonable efforts to notify the child's parents within 24 hours of a significant medical condition involving a foster child.

(c) The department is not required to provide notice under Subsection (b) to a parent who:

(1) has failed to give the department current contact information and cannot be located;

(2) has executed an affidavit of relinquishment of parental rights;

(3) has had the parent's parental rights terminated;

or
(4) has had access to medical information otherwise restricted by the court.

CHAPTER 266. INTERAGENCY COORDINATING COUNCIL FOR BUILDING HEALTHY FAMILIES

HB 1685 ADDS THIS CHAPTER [SECOND OF TWO]

[Omitted]



**2005 TEXAS LEGISLATIVE
ACTIONS AFFECTING ALLEGED
CHILD ABUSE OR NEGLECT**

BY JOHN J. SAMPSON
Presented to the
Robert O. Dawson Juvenile Law Institute
Dallas, Texas
February 23, 2006

**GRANDPARENT'S STANDING
TO RESCUE ALLEGED
ABUSED OR NEGLECTED
GRANDCHILDREN, PLUS
INTERVENTION BY
GRANDPARENT OR
OTHER PERSON**

§ 102.004

**AAL & GAL RIGHTS &
DUTIES CONSOLIDATED**

§§ 107.002, .004,
.005, .006, .009

**AAL FOR CHILD MUST
HAVE SPECIAL TRAINING**

§ 107.004

4

**AAL FOR CHILD SUBJECT
TO DISCIPLINARY RULES.**

WHO KNEW?

§ 107.0045

5

**IF AAL FOR CHILD AND GAL
DISAGREE,
BOTH POSITIONS
TO BE PRESENTED
TO COURT**

§ 107.008

6

**MORE UNFUNDED
MANDATES FOR PARENT'S
AAL; CPS SEEKING
TEMPORARY ORDER
TRIGGERS APPOINTMENT**

§§ 107.013-.015

7

**"SPARE THE ROD" STILL IN
VOGUE, BUT ONLY BY
SPECIFIED PERSONS**

§ 151.001

8

**JUDGE'S INTERVIEW OF
CHILD IN CHAMBERS
REVISED**

§ 153.009

9

LIMITED SIBLING
ACCESS CREATED,
BUT IN CPS CASES ONLY

§§ 102.0045, 153.551-.552

10

PARENTING PLANS—
THE WAVE OF THE
FUTURE?

§§ 153.007, .133, .134, .601-.604;
H.R.C. 153

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SHOULD WE CALL IN
THE PARENTING
COORDINATOR?
(SEEMS DUBIOUS IN
CPS CONTEXT)

§§ 153.605-.610

12

FEW CHANGES MADE TO
TERMINATION, BUT ONE
GOOD IDEA IS
PROBLEMATIC

§ 161.001

13

ASSOCIATE JUDGES
GIVEN POWER
TO RENDER
TEMPORARY ORDERS

§ 201.007

14

SENATE BILL SIX EXERTS
ITSELF

§ 261.001

15

CPS NOTICE TO PARENT OF
INTENT TO TRANSPORT
CHILD SOUNDS
REASONABLE—BUT IT
WON'T BE EASY

§ 261.302

16

WEIGHING FOURTH
AMENDMENT RIGHTS
VS.
INTERFERENCE WITH
INVESTIGATION

§ 261.3032

17

A LITTLE MORE NOTICE
GIVEN; TO BE BALANCED
BY REQUEST FOR MUCH
MORE INFORMATION IN
RETURN

§ 261.307

18

**BILINGUALISM IS HERE
AND NOW**

§§ 261.307 - .3071

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**IS “COLOCATION” A
WORD?**

§ 261.3126

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**WHAT TO DO WITH
POSSIBLE PLACEMENT
INFORMATION**

§ 262.201

21

ONE-YEAR DROP-DEAD
DATE RECEIVES NEW
TEETH—
IS “EXTRAORDINARY”
IN THE EYE OF THE
BEHOLDER?

§ 263.401

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APPELLATE REVERSALS
TO BE REINED IN?

§ 263.405

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BABY MOSES
PRESUMPTION
UNDERGOES A SERIOUS
REMODEL

§ 263.407

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IS THERE NO END TO
SENATE BILL 6?

§ 264.001

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DO YOU WANT MORE
ADR? THEN TRY FAMILY
GROUP COUNSELING

§ 264.2015

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THE END IS IN SIGHT....

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IMPLEMENTATION OF
INFORMED CONSENT
FOR MEDICAL CARE
WILL BE INCREMENTAL

§ 266.004 - .005
