

BILL ANALYSIS

Senate Research Center

H.B. 3390
By: Sanford et al. (Paxton)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There have been calls for the state to do more to ensure that every person who may possibly be a suitable caregiver for a child in the conservatorship of the Department of Family and Protective Services (DFPS) is identified. H.B. 3390 seeks to answer those calls by establishing provisions that seek to ensure that a child in DFPS conservatorship is asked to provide the name of any adult who could be a relative or designated caregiver for the child.

H.B. 3390 amends current law relating to caregivers for certain children, including the identification of caregivers for children in the conservatorship of the Department of Family and Protective Services and an exception from licensing requirements for certain caretakers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of the Department of Family and Protective Services in SECTION 14 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 107.002(b), Family Code, as follows:

(b) Requires a guardian ad litem appointed for the child under this chapter (Special Appointments, Child Custody Evaluations, and Adoption Evaluations), to perform certain actions, including seeking to elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child and immediately provide the names of those individuals to the Department of Family and Protective Services (DFPS). Makes nonsubstantive changes.

SECTION 2. Amends Section 107.003(a), Family Code, as follows:

(a) Provides that an attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court is required to perform certain actions, including seeking to elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child and immediately provide the names of those individuals to DFPS. Makes nonsubstantive changes.

SECTION 3. Amends the heading to Section 261.307, Family Code, to read as follows:

Sec. 261.307. INFORMATION RELATING TO INVESTIGATION PROCEDURE AND CHILD PLACEMENT RESOURCES.

SECTION 4. Amends Section 261.307(a), Family Code, as follows:

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

(1) makes no changes to this subdivision;

(2) if DFPS 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) makes a nonsubstantive change to this subparagraph;

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

(iii) ask the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative caregiver or designated caregiver for the child; and

(iv) list on the form the name of each individual identified by the child as a potential relative caregiver or designated caregiver; and

(B) makes no changes to this paragraph and no further changes to this subsection.

SECTION 5. Amends Section 262.0022, Family Code, as follows:

Sec. 262.0022. REVIEW OF PLACEMENT; FINDINGS. Creates Subsection (d) from existing text. Requires the court conducting a certain review of placement of a child in the managing conservatorship of DFPS to include in its findings a statement on whether DFPS:

(1) asked the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative caregiver or designated caregiver for the child; and

(2) has the option of placing the child with a relative caregiver or designated caregiver, rather than has the option of placing the child with a relative or designated caregiver.

SECTION 6. Amends Sections 262.114(a), (a-2), and (b), Family Code, as follows:

(a) Requires DFPS, before a full adversary hearing under Subchapter C (Adversary Hearing), to 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 (Information Relating to Investigation Procedure), including any adult identified by the child. Requires DFPS, until DFPS identifies a relative or other designated individual qualified to be a substitute caregiver, to continue to explore substitute caregiver options, including asking the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child, rather than to continue to explore substitute caregiver options.

(a-2) Requires DFPS, if the child has not been placed with a relative or other designated caregiver by the time of the full adversary hearing under Section 262.201 (Full Adversary Hearing; Findings of the Court), to file with the court a statement that explains:

(1) the reasons why DFPS has not placed the child with a relative or other designated caregiver listed on the proposed child placement resources form, including any adult identified by the child; and

(2) makes no changes to this subdivision.

(b) Authorizes DFPS to place a child with a relative or other designated caregiver identified on the proposed child placement resources form, including any adult identified by the child, if DFPS determines that the placement is in the best interest of the child.

SECTION 7. Amends Section 262.201, Family Code, by adding Subsection (l-1), as follows:

(l-1) Requires the court to ask all parties present at the full adversary hearing whether:

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

(2) each individual identified by the child as a potential relative or designated caregiver is listed on the proposed child placement resources form.

SECTION 8. Amends Section 263.002(b), Family Code, as follows:

(b) Creates Subsection (d) from existing text. Requires the court conducting a certain review of the placement of a child in the managing conservatorship of DFPS to include in its findings a statement whether DFPS:

(1) asked the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child; and

(2) placed the child with a relative or designated caregiver, rather than placed the child with a relative or other designated caregiver.

SECTION 9. Amends Section 263.202(h), Family Code, as follows:

(h) Requires the court to ask all parties present at the status hearing whether:

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

(2) each individual identified by the child as a potential relative or designated caregiver is listed on the proposed child placement resources form.

SECTION 10. Amends Section 263.306(a-1), Family Code, as follows:

(a-1) Requires the court, at each permanency hearing before a final order is rendered, to:

(1) makes no changes to this subdivision;

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

(A) makes no changes to this paragraph; and

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

(3)–(4) makes no changes to these subdivisions;

(5) review the permanency progress report to determine:

(A)–(D) makes no changes to these paragraphs;

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

(F) creates this paragraph from existing text, renumbers the following paragraphs accordingly, and makes no further changes.

SECTION 11. Amends Section 263.5031, Family Code, as follows:

Sec. 263.5031. PERMANENCY HEARINGS FOLLOWING FINAL ORDER. Creates subsection (3)(C) from existing text. Requires the court, at each permanency hearing after the court renders a final order, to:

(1)–(2) makes no changes to these subdivisions; and

(3) review the permanency progress report to determine:

(A) makes no changes to this paragraph;

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

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

(D) redesignates existing Paragraphs (C)–(K) as Paragraphs (D)–(L).

SECTION 12. Amends Section 264.751(1), Family Code, to redefine "designated caregiver" to mean an individual who has a longstanding and significant relationship with a child or the family of a child, rather than with a child, for whom DFPS has been appointed managing conservator and who meets certain other criteria.

SECTION 13. Reenacts Section 42.041(b), Human Resources Code, as amended by Chapters 244 (H.B. 871) and 317 (H.B. 7), Acts of the 85th Legislature, Regular Session, 2017, and amends it as follows:

(b) Provides that this section (Required License) does not apply to:

(1)–(20) makes no changes to these subdivisions;

(21) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which:

(A)–(B) makes no changes to these paragraphs; and

(C) the caretaker had a long-standing and significant relationship with the child or sibling group, or the family of the child or sibling group, rather than with the child or sibling group, before the child or sibling group was placed with the caretaker;

(22) makes no changes to this subdivision;

(23)–(24) makes nonsubstantive changes to these subdivisions; or

(25) redesignates existing text of Subdivision (24) as Subdivision (25) and makes no further changes.

SECTION 14. Requires the commissioner of DFPS, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 15. Effective date: upon passage or September 1, 2019.