

CHAPTER 842

H.B. No. 957

AN ACT

relating to the review of placement of a child under the care of the Department of Protective and Regulatory Services.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 18, Family Code, is amended to read as follows:

CHAPTER 18. REVIEW OF PLACEMENT OF CHILDREN UNDER
THE CARE OF THE DEPARTMENT OF PROTECTIVE AND
REGULATORY [HUMAN] SERVICES

Sec. 18.01. *GENERAL PROVISIONS; DEFINITIONS.* (a) *In this chapter:*

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

(2) "Child's home" means the place of residence of the child's parents.

(b) *In the preparation and review of a service plan under Sections 18.02–18.10 of this code and in Subsection (a)(2) of this section, a reference to the parents of the child includes both parents of the child unless the child has only one parent or unless, after due diligence by the department in attempting to locate a parent, only one parent is located, in which case the reference is to the remaining parent.*

Sec. 18.02. *REVIEW OF PLACEMENTS BY COURT OF CONTINUING JURISDICTION.* [(a)] In a suit affecting the parent-child relationship in which the department [Texas Department of Human Services] or any authorized agency has been named by the court or in an affidavit of relinquishment of parental rights as the managing conservator of a child, the court shall hold a hearing to review the conservatorship appointment and the department's or authorized agency's placement of the child [by the department or authorized agency] in foster home care, group home care, or institutional care.

Sec. 18.03. *SERVICE PLAN; CONTENTS.* (a) *Not later than the 45th day after the date of the conclusion of a hearing under Section 17.04 of this code, the department or other agency named the managing conservator of a child shall file a service plan.*

(b) *The service plan shall:*

(1) *be specific;*

(2) *be in writing;*

(3) *be prepared by the department or other agency in conference with the child's parents;*

(4) *state any appropriate deadlines;*

(5) state whether the goal of the plan is:

(A) return of the child to the child's parents;

(B) termination of parental rights and placement of the child for adoption; or

(C) because of the child's special needs or exceptional circumstances, continuation of the child's care out of the child's home;

(6) state the steps that are necessary to:

(A) return the child to the child's home if the placement is in foster care;

(B) enable the child to remain in the child's home with the assistance of a service plan if the placement is in the home under the department's or other agency's supervision; or

(C) otherwise provide a permanent safe placement for the child;

(7) state the actions and responsibilities that are necessary for the child's parents to take to achieve the plan goal during the period of the service plan and the assistance to be provided to the parents by the department or other authorized agency toward meeting that goal;

(8) give 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

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

(c) The service plan shall include the following statement:

TO THE PARENT: THIS IS A VERY IMPORTANT DOCUMENT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT WITHIN THE REASONABLE PERIOD SPECIFIED IN THE PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT, YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS MAY BE RESTRICTED OR TERMINATED OR YOUR CHILD MAY NOT BE RETURNED TO YOU. THERE WILL BE A COURT HEARING AT WHICH A JUDGE WILL REVIEW THIS SERVICE PLAN.

(d) If both parents are available but do not live in the same household and do not agree to cooperate with one another in the development of a service plan for the child, the department in preparing the service plan may provide for the care of the child in the home of either parent or the homes of both parents as the best interest of the child requires.

Sec. 18.04. SERVICE PLAN: SIGNING AND TAKING EFFECT. (a) Before the service plan is signed, the child's parents and the representative of the department or other agency shall discuss each term and condition of the plan.

(b) The child's parents and the person preparing the service plan shall sign the plan, and the department shall give each parent a copy of the service plan.

(c) The plan takes effect when:

(1) the child's parents and the appropriate representative of the department or other authorized agency sign the plan; or

(2) the department or other authorized agency determines that the child's parents are unable or unwilling to sign the plan.

(d) The service plan is in effect until the court amends it.

Sec. 18.05. AMENDED SERVICE PLAN. (a) At any time after the service plan is filed, the parties may agree to an amended service plan.

(b) The amended service plan supersedes the previously filed service plan and takes effect when:

(1) the child's parents and the appropriate representative of the department or other authorized agency sign the plan; or

(2) the department or other authorized agency determines that the child's parents are unable or unwilling to sign the plan.

(c) The amended service plan remains in effect until the court amends it.

Sec. 18.06. REVIEW OF SERVICE PLAN. (a) The service plan currently in effect shall be filed with the court along with the next required status report.

(b) The court shall review the plan at the next required hearing under this chapter after the plan is filed.

Sec. 18.07. STATUS HEARING. (a) Not later than the 60th day after the date of a hearing under Section 17.04 of this code, the court shall hold a status hearing.

(b) If all parties entitled to notice under Section 18.12 of this code were not served, the court shall make findings as to whether:

(1) the department or other agency has exercised due diligence to locate all necessary persons; and

(2) if only one parent is before the court, that parent has furnished to the department all available information necessary to locate any absent parent through the federal parental locator service.

(c) The court shall review the service plan that the department or other agency filed under Section 18.03 of this code for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

(1) a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child; and

(2) the child's parents have reviewed and understand the service plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents.

(d) The court shall advise the parties that progress under the service plan will be reviewed at all subsequent hearings.

Sec. 18.08. INITIAL REVIEW HEARING. (a) Not later than the 180th day after the date of the conclusion of the hearing under Section 17.04 of this code, the court shall hold a review hearing.

(b) Notice of a review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to all persons entitled to notice of the hearing.

(c) If a person entitled to notice under Section 11.09(a) or 18.12 of this code has not been served, the court shall review the department's or other agency's efforts at attempting to locate all necessary persons and requesting service of citation and the assistance of any parent in providing information necessary to locate an absent parent.

Sec. 18.09. REVIEW HEARINGS: PROCEDURE. (a) At each review hearing the court shall:

(1) identify all persons or parties present at the hearing or those given notice but failing to appear;

(2) consider all relevant information pertaining to the factors under Section 18.15 of this code to determine whether the child's parents are willing and able to provide the child with a safe environment; and

(3) determine the extent to which the child's parents have taken the necessary actions or responsibilities toward achieving the plan goal during the period of the service plan and the extent to which the department or other authorized agency has provided assistance to the parents as provided in the service plan.

(b) At each review hearing the court also shall:

(1) determine whether the child's parents are willing and able to provide the child with a safe environment without the assistance of a service plan and, if so, return the child to the parents;

(2) determine whether the child's parents are willing and able to provide the child with a safe environment with the assistance of a service plan and, if so, return the child or

continue the placement of the child in the child's home under the department's or other agency's supervision;

(3) determine whether the child's parents are presently unwilling or unable to provide the child with a safe environment, even with the assistance of a service plan, and, if so, order the child to remain under the department's or other agency's managing conservatorship for a period of time specified by the court;

(4) determine whether a long-term foster care placement is in the child's best interest because of the child's special needs or circumstances and, if so, begin a long-term foster care placement;

(5) determine whether a child is 16 years of age or older and, if so, order the services that are needed to assist the child in making the transition from foster care to independent living if the services are available in the community;

(6) determine whether the child has been placed with the department under a voluntary placement agreement and, if so, order that the department will institute further proceedings or return the child to the parents;

(7) determine whether the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department or authorized agency managing conservator and, if so, direct the department or authorized agency to institute further proceedings; or

(8) determine whether parental rights to the child have been terminated and, if so, determine whether the department or authorized agency will attempt to place the child for adoption.

(c) In any case in which the court determines that a disposition under Subsection (b)(3) of this section is appropriate, the court shall make a finding that the child's parents understand that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code, and in the case of a child residing in foster care for at least 18 months, the court shall determine the appropriateness of the target date by which the child may return home. The court may also enter any further orders that are appropriate.

Sec. 18.10. **SUBSEQUENT REVIEW HEARINGS.** (a) Subsequent review hearings ~~[(b) The hearing]~~ shall be held not earlier than five and one-half months and not later than seven ~~[twelve]~~ months after the date of the last hearing in the suit unless, for good cause shown by any party, an earlier hearing is approved by the court.

~~[(c) Not earlier than five and one-half months and not later than seven months after the date of the last hearing in the suit the department shall:~~

~~[(1) petition the court for a hearing; or~~

~~[(2) conduct an administrative review of the placement of the child and provide a written report concerning the results of the review to the court and all parties to the suit.]~~

(b) At least 10 days before the date set for each review hearing, the department or other authorized agency shall file with the court a status report unless the court orders a different period or orders that a report is not required for a specific hearing. The report shall:

(1) evaluate all relevant information concerning each of the guidelines under Section 18.15 of this code and the parties' compliance with the service plan; and

(2) recommend one of the following actions:

(A) that the child be returned to the child's home and that the suit be dismissed;

(B) that the child be returned to the child's home with the department or other agency retaining conservatorship;

(C) that the child remain in foster care for a specified period and that the child's parents continue to work toward providing the child with a safe environment;

(D) that the child remain in foster care for a specified period and that termination of parental rights be sought under this code;

(E) that a child who has resided in foster care for at least 18 months be placed or remain in permanent or long-term foster care because of the child's special needs or circumstances; or

(F) that other plans be made or other services provided in accordance with the child's special needs or circumstances.

(c) A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's guardian ad litem may file a response to the department's or other agency's report filed under Subsection (b) of this section. A response must be filed not later than the third day before the date of the hearing.

Sec. 18.11 [18.02]. VOLUNTARY PLACEMENTS: SUIT. (a) If a parent, managing conservator, or guardian [~~of the person~~] of a child who is not subject to the continuing jurisdiction of a court under this title voluntarily agrees to surrender the custody, care, or control of a child to the *department* [~~Texas Department of Human Services~~], the department, not later than 60 days after taking possession of or exercising control of the child, shall file a suit affecting the parent-child relationship under this title, establishing a court of continuing jurisdiction for the child, and requesting a review of the placement of the child in foster home care, group home care, or institutional care.

(b) The petition shall state that the purpose of the suit is to initiate periodic review of the necessity and propriety of the *child's* placement *in accordance with Sections 18.02–18.10 of this code* [~~of the child~~]. A copy of the agreement between the department and the parent, managing conservator, or guardian of the child shall be filed with the petition.

~~[(c) In addition to those persons listed in Section 11.09(a) of this code as entitled to service of citation in a suit affecting the parent-child relationship, a person listed in Section 18.03 of this code is entitled to service of citation.~~

~~[(d) The hearing shall be held not earlier than five and one-half months and not later than twelve months after the date that the department took possession of or exercised control over the child unless, for good cause shown by any party, an earlier hearing is approved by the court.~~

~~[(e) Not earlier than five and one-half months and not later than seven months after the date the department took possession of or exercised control over the child the department shall:~~

~~[(1) petition the court for a hearing; or~~

~~[(2) conduct an administrative review of the placement of the child and provide a written report concerning the results of the review to the court and all parties to the suit.]~~

Sec. 18.12 [18.03]. PERSONS ENTITLED TO NOTICE. The following persons are entitled to at least 10 days' notice of a hearing to review a *child's* [~~child~~] placement and are entitled to present evidence and be heard at the hearing:

(1) the *department* [~~Texas Department of Human Services~~];

(2) the foster parent or director of the group home or institution where the child is residing;

(3) each parent of the child;

(4) the managing conservator or guardian of the [~~person of the~~] child; and

(5) any other person or agency named by the court to have an interest in the *child's* welfare [~~of the child~~].

Sec. 18.13 [18.04]. WHEN CHILD IS AT HOME. (a) If the *department* [~~Texas Department of Human Services~~] or authorized agency returns a child to a parent for custody, care, or control, the department or authorized agency shall notify the court having continuing jurisdiction of the suit of the department's action and, so long as the child remains under the custody, care, or control of the parent, no review of that placement is required under this chapter.

(b) If a child has been returned to a parent and if the department or authorized agency resumes the custody, care, or control of the child or designates any person other than a parent to have the custody, care, or control of the child, the department or authorized agency shall notify the court of its action.

(c) If the department or authorized agency resumes the custody, care, or control of the child or designates a person other than a parent to have the custody, care, or control of the child within three months after returning the child to a parent, the period that that child was under the custody, care, or control of his or her parent shall not be considered in determining the date for the next placement review hearing.

Sec. 18.14 [18.05]. **CHILD'S ATTENDANCE AT HEARING.** The court [~~in its discretion~~] may dispense with the attendance of the child at a placement review hearing.

Sec. 18.15 [18.06]. **FACTORS IN DETERMINING BEST INTEREST [DISPOSITION] OF CHILD.** (a) *In considering the factors established by this section, the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.*

(b) *The following factors should be considered by the court, the department, and other authorized agencies in determining whether the child's parents are willing and able to provide the child with a safe environment:*

- (1) *the child's age and physical and mental vulnerabilities;*
- (2) *the frequency and nature of out-of-home placements;*
- (3) *the magnitude, frequency, and circumstances of the harm to the child;*
- (4) *whether the child has been the victim of repeated harm after the initial report and intervention by the department or other agency;*
- (5) *whether the child is fearful of living in or returning to the child's home;*
- (6) *the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;*
- (7) *whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;*
- (8) *whether there is a history of substance abuse by the child's family or others who have access to the child's home;*
- (9) *whether the perpetrator of the harm to the child is identified;*
- (10) *the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;*
- (11) *the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;*
- (12) *whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:*
 - (A) *minimally adequate health and nutritional care;*
 - (B) *care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;*
 - (C) *guidance and supervision consistent with the child's safety;*
 - (D) *a safe physical home environment;*
 - (E) *protection from repeated exposure to violence even though the violence may not be directed at the child; and*
 - (F) *an understanding of the child's needs and capabilities; and*
- (13) *whether an adequate social support system consisting of an extended family and friends is available to the child.*

(c) *In the case of a child 16 years of age or older, the following guidelines should be considered by the court in determining whether to adopt the permanency plan submitted by the department:*

- (1) *whether the permanency plan submitted to the court includes the services planned for the child to make the transition from foster care to independent living; and*
- (2) *whether this transition is in the best interest of the child.*

Sec. 18.16. REVIEW AFTER TERMINATION OR RELINQUISHMENT OF PARENTAL RIGHTS. ~~If [At the conclusion of a placement review hearing under this chapter, the court, in accordance with the best interest of the child, may order:~~

~~[(1) that the foster care, group home care, or institutional care be continued;~~

~~[(2) that the child be returned to his or her parent or guardian;~~

~~[(3) if the child has been placed with the Texas Department of Human Services under a voluntary agreement, that the department institute further proceedings to appoint the department as managing conservator or to terminate parental rights in order to provide permanent placement for the child or to make the child available for adoption;~~

~~[(4) if] the parental rights to a [of the] child have [already] been terminated *and the child is eligible for adoption* or the department or authorized agency has custody, care, and control of a [the] child under an affidavit of relinquishment of parental rights naming the department or authorized agency as managing conservator, *the court shall review the department's or authorized agency's efforts* ~~[that the department or authorized agency attempt]~~ to place the child for adoption *at least once every six months*; ~~or~~~~

~~[(5) the Texas Department of Human Services or authorized agency to provide services to ensure that every effort has been made to enable the parents to provide a family for their own children].~~

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 8, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 957 on May 24, 1993, by a non-record vote; passed by the Senate, with amendments, on May 20, 1993: Yeas 31, Nays 0.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.