

By: Uresti

S.B. No. 1052

A BILL TO BE ENTITLED

AN ACT

relating to a foster children's bill of rights.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.007 to read as follows:

Sec. 263.007. FOSTER CHILDREN'S BILL OF RIGHTS. (a) In this section:

(1) "Agency foster group home," "agency foster home," "facility," "foster group home," and "foster home" have the meanings assigned by Section 42.002, Human Resources Code.

(2) "Foster care" means the placement of a child who is in the conservatorship of the department or an authorized agency in care outside the child's home in an agency foster group home, agency foster home, foster group home, foster home, or another facility licensed or certified under Chapter 42, Human Resources Code, in which care is provided for 24 hours a day.

(3) "Foster children's bill of rights" means the list of rights prescribed by Subsection (b) to which each child in foster care is entitled.

(b) It is the policy of this state that, to the extent provided by state or federal law or policy, each child in foster care has the right:

(1) to live in a safe, healthy, and comfortable home where the child is treated with respect;

1 (2) to be free from physical, sexual, emotional, and
2 other abuse, including corporal punishment and any form of
3 discipline that humiliates or demeans the child;

4 (3) to be free from discrimination or harassment on
5 the basis of gender, race, ethnicity, religion, national origin,
6 disability, sexual orientation, or HIV status;

7 (4) to receive adequate and healthy food;

8 (5) to receive and keep adequate clothing suitable to
9 the child's age and size and comparable to the clothing of other
10 children in the community;

11 (6) to receive appropriate medical, dental, vision,
12 and mental health services;

13 (7) subject to Subdivisions (8) and (9), to not be
14 physically restrained for longer than one minute unless other less
15 restrictive behavioral interventions have been unsuccessful and
16 physical restraint is necessary to:

17 (A) prevent substantial physical harm or
18 imminent, probable death to the child or imminent physical harm to
19 another person; or

20 (B) administer medication or provide medical
21 treatment prescribed by a physician;

22 (8) to not be physically restrained for any period as
23 punishment, retribution, retaliation, or discipline, to obtain
24 compliance from the child, for the convenience of the foster parent
25 or other foster care provider, or as a substitute for effective
26 treatment or rehabilitation;

27 (9) to not be locked or otherwise confined in any room,

1 building, or facility or placed in an area where the child is
2 physically prevented from leaving, unless the confinement or
3 restriction is based on the written orders of a psychiatrist,
4 psychologist, or physician or is used in an emergency in accordance
5 with the department's minimum standards for emergency behavior
6 interventions;

7 (10) to be placed in foster care with the child's
8 siblings unless that placement is not in the best interests of the
9 child or the child's siblings;

10 (11) if a sibling of the child is not placed in foster
11 care with the child, to be informed in writing of the name, address,
12 and telephone number of the home or facility in which the sibling is
13 placed, unless prohibited by court order or the child's caseworker
14 or a department supervisor determines that it is not in the child's
15 best interests and the caseworker or supervisor, as applicable,
16 includes the reason for that determination in the child's case
17 records;

18 (12) to have a private storage space in the home or
19 facility in which the child resides to store the child's personal
20 belongings;

21 (13) to not be subjected to unreasonable searches of
22 the child's personal belongings;

23 (14) to contact caseworkers, attorneys ad litem,
24 guardians ad litem, and court-appointed special advocates;

25 (15) to communicate with caseworkers, judges,
26 attorneys ad litem, guardians ad litem, court-appointed special
27 advocates, foster parents, and other providers in the child's

1 primary language, including in sign language;

2 (16) to regularly visit and regularly contact siblings
3 and to regularly contact other family members, unless prohibited by
4 court order or the child's caseworker or a department supervisor
5 determines that it is not in the child's best interests and the
6 caseworker or supervisor, as applicable, includes the reason for
7 that determination in the child's case records;

8 (17) to never be denied contact or visitation with
9 siblings or other family members as a form of discipline;

10 (18) to attend religious services and activities of
11 the child's choice;

12 (19) to interact with persons outside of the foster
13 care system, including teachers, church members, mentors, and
14 friends;

15 (20) to make and receive confidential telephone calls
16 and to send and receive unopened mail, unless prohibited by court
17 order or the child's caseworker or a department supervisor
18 determines that it is not in the child's best interests and the
19 caseworker or supervisor, as applicable, includes the reason for
20 that determination in the child's case records;

21 (21) to receive an age-appropriate money allowance, in
22 an amount determined by the foster parent or other foster care
23 provider, for the purpose of developing money management skills,
24 using money from the foster care payments made by the department to
25 the foster parent or other foster care provider for the care of the
26 child;

27 (22) to maintain a personal bank account and manage

1 personal income consistent with the child's age and developmental
2 level, unless prohibited by the child's service plan;

3 (23) to expect that the child's records will be kept
4 confidential in accordance with existing state and federal law,
5 including the child's medical, mental health, child protective
6 services, and educational records;

7 (24) to receive care and treatment in the least
8 restrictive environment that is most like a family setting,
9 consistent with the best interests and needs of the child;

10 (25) to not be unnecessarily or excessively medicated;

11 (26) to not be admitted as a voluntary inpatient to a
12 mental health facility unless the child consents as required by
13 Section 572.001(c), Health and Safety Code;

14 (27) if the child is at least 14 years of age, to
15 request a medical review of the child's medical care, including a
16 review of the medications prescribed to the child, by a medical
17 review team, and to receive a copy of the results of any medical
18 review;

19 (28) to be informed before the child is 16 years of age
20 that the child, at 16 years of age, may request a court hearing to
21 determine if the child has the capacity to consent to medical care
22 under Section 266.010;

23 (29) if the child is at least 16 years of age, to
24 consent to all or some medical care, as authorized by the court
25 under Section 266.010;

26 (30) if the child is at least 12 years of age, to
27 participate in the development of the child's service plan and

1 permanency plan;

2 (31) if the child is at least 12 years of age, to
3 review and receive information regarding the child's service plan
4 and permanency plan, including any changes made to the plans;

5 (32) to receive information about the child's foster
6 parent or other foster care provider consistent with the child's
7 age and developmental level;

8 (33) to be appointed an attorney ad litem who is
9 competent and provides zealous legal representation of the child's
10 interests, and to meet, in person, with the child's attorney ad
11 litem before each hearing involving the child;

12 (34) to request the appointment of an attorney or
13 guardian ad litem to represent the child, if the child is not
14 already represented by an attorney or guardian ad litem;

15 (35) to attend a court hearing that affects the
16 conservatorship or placement of the child, including a status
17 hearing, a permanency review hearing, or a placement review
18 hearing;

19 (36) if the child is at least 14 years of age, to
20 remain in the courtroom during a court hearing that affects the
21 conservatorship or placement of the child, including a status
22 hearing, a permanency review hearing, or a placement review
23 hearing;

24 (37) regardless of the child's age, to speak privately
25 to the judge at a court hearing that affects the conservatorship or
26 placement of the child, including a status hearing, a permanency
27 review hearing, or a placement review hearing;

1 (38) if the child has a disability, to be informed, in
2 writing, of the name, existence, purpose, telephone number, and
3 address of the protection and advocacy system established in this
4 state under the applicable federal developmental disability laws,
5 as defined by Section 112.001, Human Resources Code, for the
6 purpose of advocating for and protecting the rights of persons with
7 that disability;

8 (39) to attend school and participate in sports,
9 clubs, and other school-related extracurricular activities,
10 consistent with the child's age and developmental level;

11 (40) to participate in community activities,
12 including recreational and social activities, consistent with the
13 child's age and developmental level;

14 (41) to the extent possible, to have minimal
15 disruption in the child's education, including the right to attend
16 the same school if placed with an alternative foster care provider,
17 unless otherwise ordered by the court;

18 (42) if the child participates in a special education
19 program, to meet and consult with the surrogate parent assigned to
20 the child in accordance with federal law, regarding the child's
21 individualized education program prior to each admission, review,
22 and dismissal committee meeting held regarding the child;

23 (43) to participate in an organization that advocates
24 for or on behalf of foster youth;

25 (44) to work and develop job skills consistent with
26 the child's age in accordance with state and federal law;

27 (45) if the child is at least 16 years of age, to have

1 access to information regarding postsecondary educational and
2 vocational options available to the child, including information
3 regarding financial aid available for postsecondary education and
4 the course work or other requirements required to complete
5 vocational training and postsecondary educational programs;

6 (46) to attend classes and receive other services
7 provided under the Preparation for Adult Living Program established
8 under Section 264.121;

9 (47) on, or as soon as possible after, the date of the
10 child's 18th birthday or the date the child's disabilities of
11 minority are removed, to be provided with the child's health and
12 education passport information, social security card, state-issued
13 personal identification card, and a certified copy of the child's
14 birth certificate;

15 (48) to be informed in writing of how the child may
16 obtain copies of the child's case records;

17 (49) to be informed in writing of the name, address,
18 and telephone number of the person at or the division or office of
19 the department that handles complaints regarding a violation of the
20 child's rights; and

21 (50) to make a confidential complaint with the
22 appropriate person at or the division or office of the department,
23 or to speak confidentially with an appropriate person at the
24 department, regarding a violation of the child's rights without
25 punishment or threat of punishment for making the complaint.

26 (c) This section may not be construed to require a foster
27 parent or other foster care provider to take any action that would

1 impair the health or safety of a child in foster care. Any action
2 taken that is inconsistent with the foster children's bill of
3 rights must be included in the permanency progress report or
4 placement review report filed with a court.

5 (d) The department shall provide a written copy of the
6 foster children's bill of rights to each child placed in foster care
7 in the child's primary language, if possible, and shall inform the
8 child of the rights provided by the foster children's bill of
9 rights:

10 (1) orally in the child's primary language, if
11 possible, and in simple, nontechnical terms; or

12 (2) for a child who has a disability, including an
13 impairment of vision or hearing, through any means that can
14 reasonably be expected to result in successful communication with
15 the child.

16 (e) A child placed in foster care may, at the child's
17 option, sign a document acknowledging the child's understanding of
18 the foster children's bill of rights after the department provides
19 a written copy of the foster children's bill of rights to the child
20 and informs the child of the rights provided by that bill of rights
21 in accordance with Subsection (d). If a child signs a document
22 acknowledging the child's understanding of the foster children's
23 bill of rights, the document must be placed in the child's case
24 file.

25 (f) An agency foster group home, agency foster home, foster
26 group home, foster home, or other facility in which a child is
27 placed in foster care shall provide a copy of the foster children's

1 bill of rights to a child on the child's request. The foster
2 children's bill of rights must be printed in English and in a second
3 language.

4 (g) The department shall promote the participation of
5 foster children and former foster children in educating other
6 foster children about the foster children's bill of rights.

7 (h) Except as provided by this subsection, the executive
8 commissioner of the Health and Human Services Commission and the
9 department, as appropriate, shall ensure that the rules and
10 policies governing foster care are consistent with the state policy
11 outlined by Subsection (b). The executive commissioner or the
12 department, as appropriate, may adopt rules or policies that
13 provide greater protections for the rights of children in foster
14 care.

15 SECTION 2. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2009.