

Chapter 1022

H.B. No. 1542

AN ACT

relating to the definition of the least restrictive environment for the placement of children in foster care.

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

SECTION 1. Section 263.001(a), Family Code, is amended by amending Subdivision (3-a) and adding Subdivision (3-b) to read as follows:

(3-a) "Least restrictive setting" means a placement for a child that, in comparison to all other available placements, is the most family-like setting.

(3-b) "Physician assistant" has the meaning assigned by Section 157.051, Occupations Code.

SECTION 2. Section 263.001, Family Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) With respect to a child who is older than six years of age and who is removed from the child's home, if a suitable relative or other designated caregiver is not available as a placement for the child, placing the child in a foster home or a general residential operation operating as a cottage home is considered the least restrictive setting.

(d) With respect to a child who is six years of age or younger and who is removed from the child's home, if a suitable relative or other designated caregiver is not available as a placement for the child, the least restrictive setting for the

1 child is placement in:

2 (1) a foster home; or

3 (2) a general residential operation operating as a
4 cottage home, only if the department determines it is in the best
5 interest of the child.

6 SECTION 3. Section 264.001, Family Code, is amended by
7 adding Subdivision (3-a) to read as follows:

8 (3-a) "Least restrictive setting" means a placement
9 for a child that, in comparison to all other available placements,
10 is the most family-like setting.

11 SECTION 4. Section 264.107, Family Code, is amended by
12 adding Subsection (c) to read as follows:

13 (c) In selecting a placement for a child, the department
14 shall consider whether the placement is in the child's best
15 interest. In determining whether a placement is in a child's best
16 interest, the department shall consider whether the placement:

17 (1) is the least restrictive setting for the child;

18 (2) is the closest in geographic proximity to the
19 child's home;

20 (3) is the most able to meet the identified needs of
21 the child; and

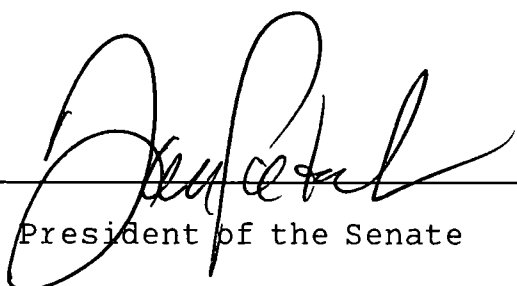
22 (4) satisfies any expressed interests of the child
23 relating to placement, when developmentally appropriate.

24 SECTION 5. (a) If the Department of Family and Protective
25 Services receives a formal determination from the United States
26 Department of Health and Human Services stating that implementing
27 the changes in law made by this Act will result in a reduction in

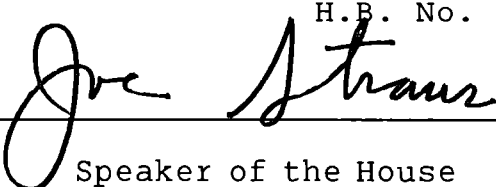
1 federal funding under either Title IV-E, Social Security Act (42
2 U.S.C. Section 670 et seq.) or a related source of federal funds,
3 the Department of Family and Protective Services may not implement
4 this Act.

5 (b) For the purpose of Subsection (a) of this section,
6 "formal determination" means a written opinion or penalty
7 assessment contained in a Child and Family Services Review
8 conducted by the Administration for Children and Families in the
9 United States Department of Health and Human Services regarding the
10 federal funding implications of the implementation of this Act.

11 SECTION 6. This Act takes effect September 1, 2017.

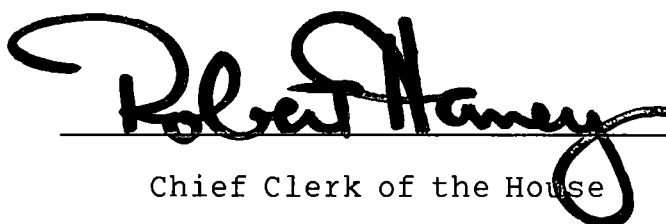


President of the Senate

H.B. No. 1542


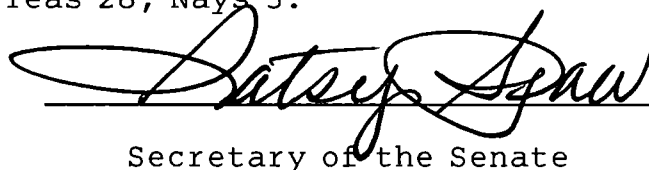
Speaker of the House

I certify that H.B. No. 1542 was passed by the House on May 8, 2017, by the following vote: Yeas 134, Nays 11, 1 present, not voting.




Chief Clerk of the House

I certify that H.B. No. 1542 was passed by the Senate on May 23, 2017, by the following vote: Yeas 28, Nays 3.




Secretary of the Senate

APPROVED: 6-13-2017
Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3PM O'CLOCK
JUN 15 2017


Secretary of State

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 16, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1542 by Price (Relating to the definition of the least restrictive environment for the placement of children in foster care.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code relating to the definition of the least restrictive environment for the placement of children in foster care.

According to the Department of Family and Protective Services (DFPS), while the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources, implementation of these provisions could result in the loss of existing federal funds.

In the event that DFPS receives a formal determination from the United States Department of Health and Human Services stating that implementation of this provision would result in a reduction of federal funding, DFPS may not implement this Act.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, EP, JLi

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 19, 2017

TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1542 by Price (Relating to the definition of the least restrictive environment for the placement of children in foster care.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code relating to the definition of the least restrictive environment for the placement of children in foster care.

According to the Department of Family and Protective Services (DFPS), while the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources, implementation of these provisions could result in the loss of existing federal funds.

Current federal law under the Social Security Act, Title IV-E, Sec 675(5)(A), established a specific definition for "least restrictive environment" for the placement of children in foster care. If the federal government considers DFPS to be out of compliance with this federal regulation, DFPS could potentially put at risk up to \$1.3 billion in existing Title IV-E and TANF federal funding. To the extent the state chose to replace any lost funds with General Revenue, there would be a cost to the state.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, EP, JLi

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 26, 2017

TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1542 by Price (Relating to the definition of the least restrictive environment for the placement of children in foster care.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1542, As Introduced: a negative impact of (\$136,730,742) through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$41,827,793)
2019	(\$94,902,949)
2020	(\$98,244,129)
2021	(\$100,382,856)
2022	(\$102,897,740)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>GR Match For Title IV- E FMAP</i> 8008	Probable (Cost) from <i>Federal Funds</i> 555	Probable Savings from <i>General Revenue Fund</i> 1
2018	(\$41,127,201)	(\$5,252,889)	(\$15,362,916)	\$4,552,297
2019	(\$91,322,374)	(\$11,070,833)	(\$32,733,554)	\$7,490,258
2020	(\$94,867,673)	(\$10,954,022)	(\$32,196,769)	\$7,577,566
2021	(\$97,354,544)	(\$10,698,423)	(\$31,247,867)	\$7,670,111
2022	(\$100,193,077)	(\$10,470,744)	(\$30,376,943)	\$7,766,081

Fiscal Analysis

This bill would amend the Family Code relating to the definition of the least restrictive environment for the placement of children in foster care.

The bill would add a definition for the "least restrictive environment" in a foster care placement, and would require additional restrictions for the placement of a child designated by the department as one who needs basic or moderate services.

The bill would take effect September 1, 2017.

Methodology

The bill is estimated to result in a net cost of \$57.2 million in All Funds in fiscal year 2018, \$127.6 million in All Funds in fiscal year 2019, \$130.4 million in All Funds in fiscal year 2020, \$131.6 million in All Funds in fiscal year 2021, and \$133.3 million in All Funds in fiscal year 2022.

The analysis assumes that the statute would only apply to new placements, and that the Department of Family and Protective Services (DFPS) would not be required to move a child from an existing placement if it does not meet the proposed requirements.

It is also assumed that, based on the current definition of "foster home" in Section 42.002 of the Human Resources Code, unverified kinship family placements would not meet the definition established for least restrictive placement in foster care for children with basic or moderate needs.

According to DFPS, the cost savings related to children no longer receiving an unverified kinship placement would total \$4.6 million in General Revenue in fiscal year 2018, \$7.5 million in General Revenue in fiscal year 2019, and approximately \$7.7 million in General Revenue each subsequent fiscal year.

These saving would be offset by the cost to transition these children into a foster home. Assuming the existing statewide mix between service type and service provider and existing rates of \$23.10 per day for DFPS homes, \$43.71 per day for child placing agency homes and general residential operations (GROs) providing basic care, and \$76.72 per day for GROs providing moderate care, the agency estimates the cost of foster home placement would total \$61.7 million in fiscal year 2018, \$135.1 million in All Funds in fiscal year 2019, \$138.0 million in All Funds in fiscal year 2020, \$139.3 million in All Funds in fiscal year 2021, and \$133.3 million in All Funds in fiscal year 2022.

In addition, the agency identified potential costs that cannot be estimated at this time, including the fiscal impact of subsequent moves of children already in foster care, the impact of children with basic or moderate needs that would have been placed in an emergency shelter, and the potential impact of increased reliance on child-specific contracts needed to ensure sufficient capacity among providers, including residential service providers.

Finally, the agency identified the potential of losing existing federal funding. Current federal law under the Social Security Act, Title IV-E, Sec 475(5)(A), requires states to place a child in foster care in the least restrictive, most family-like setting available, consistent with the child's best interest and special needs. If the federal government considers DFPS to be out of compliance with this federal regulation due to removal of the discretion associated with additional considerations

for the child's best interests and special needs, DFPS could potentially lose existing Title IV-E federal funding, which could cost the state approximately \$109 million in General Revenue Funds each fiscal year.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, EP, JLi, JBi