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H.B. No. 567

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the procedures and grounds for terminating the
3 parent-child relationship, for taking possession of a child, and
4 for certain hearings in a suit affecting the parent-child
5 relationship involving the Department of Family and Protective
6 Services.

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

8 SECTION 1. Section 107.003(b), Family Code, is amended to
9 read as follows:

10 (b) In addition to the duties required by Subsection (a), an
11 attorney ad litem appointed for a child in a proceeding under
12 Chapter 262, ~~or~~ 263, or 264 shall:

- 13 (1) review the medical care provided to the child;
14 (2) in a developmentally appropriate manner, seek to
15 elicit the child's opinion on the medical care provided;
16 (3) for a child at least 16 years of age:
17 (A) advise the child of the child's right to
18 request the court to authorize the child to consent to the child's
19 own medical care under Section 266.010; and
20 (B) ascertain whether the child has received the
21 following documents:
22 (i) a certified copy of the child's birth
23 certificate;
24 (ii) a social security card or a

1 replacement social security card;

2 (iii) a driver's license or personal
3 identification certificate under Chapter 521, Transportation Code;
4 and

5 (iv) any other personal document the
6 Department of Family and Protective Services determines
7 appropriate; and

8 (4) seek to elicit in a developmentally appropriate
9 manner the name of any adult, particularly an adult residing in the
10 child's community, who could be a relative or designated caregiver
11 for the child and immediately provide the names of those
12 individuals to the Department of Family and Protective Services.

13 SECTION 2. Sections 107.004(d), (d-2), (d-3), and (e),
14 Family Code, are amended to read as follows:

15 (d) Except as provided by Subsection (e), an attorney ad
16 litem appointed for a child in a proceeding under Chapter 262, ~~[or]~~
17 263, or 264 shall:

18 (1) meet before each court hearing with:

19 (A) the child, if the child is at least four years
20 of age; or

21 (B) the individual with whom the child ordinarily
22 resides, including the child's parent, conservator, guardian,
23 caretaker, or custodian, if the child is younger than four years of
24 age; and

25 (2) if the child or individual is not present at the
26 court hearing, file a written statement with the court indicating
27 that the attorney ad litem complied with Subdivision (1).

1 (d-2) An attorney ad litem appointed to represent a child in
2 the managing conservatorship of the Department of Family and
3 Protective Services or a child who is the subject of a proceeding
4 under Chapter 264 shall, before each scheduled hearing under
5 Chapter 263 or 264, determine whether the child's educational needs
6 and goals have been identified and addressed.

7 (d-3) An attorney ad litem appointed to represent a child in
8 the managing conservatorship of the Department of Family and
9 Protective Services or a child who is the subject of a proceeding
10 under Chapter 264 shall periodically continue to review the child's
11 safety and well-being, including any effects of trauma to the
12 child, and take appropriate action, including requesting a review
13 hearing when necessary to address an issue of concern.

14 (e) An attorney ad litem appointed for a child in a
15 proceeding under Chapter 262, ~~or~~ 263, or 264 is not required to
16 comply with Subsection (d) before a hearing if the court finds at
17 that hearing that the attorney ad litem has shown good cause why the
18 attorney ad litem's compliance with that subsection is not feasible
19 or in the best interest of the child. Additionally, a court may, on
20 a showing of good cause, authorize an attorney ad litem to comply
21 with Subsection (d) by conferring with the child or other
22 individual, as appropriate, by telephone or video conference.

23 SECTION 3. Section 161.001(c), Family Code, is amended to
24 read as follows:

25 (c) Evidence of one or more of the following does not
26 constitute clear and convincing evidence sufficient for a court to
27 [~~A court may not~~] make a finding under Subsection (b) and order

1 termination of the parent-child relationship [~~based on evidence~~
2 ~~that the parent~~]:

3 (1) the parent homeschooled the child;

4 (2) the parent is economically disadvantaged;

5 (3) the parent has been charged with a nonviolent
6 misdemeanor offense other than:

7 (A) an offense under Title 5, Penal Code;

8 (B) an offense under Title 6, Penal Code; or

9 (C) an offense that involves family violence, as
10 defined by Section 71.004 of this code;

11 (4) the parent provided or administered low-THC
12 cannabis to a child for whom the low-THC cannabis was prescribed
13 under Chapter 169, Occupations Code; [~~or~~]

14 (5) the parent declined immunization for the child for
15 reasons of conscience, including a religious belief; or

16 (6) the parent allowed the child to engage in
17 independent activities that are appropriate and typical for the
18 child's level of maturity, physical condition, developmental
19 abilities, or culture.

20 SECTION 4. Section 161.101, Family Code, is amended to read
21 as follows:

22 Sec. 161.101. PETITION ALLEGATIONS; PETITION AND MOTION
23 REQUIREMENTS. (a) A petition for the termination of the
24 parent-child relationship is sufficient without the necessity of
25 specifying the underlying facts if the petition alleges in the
26 statutory language the ground for the termination and that
27 termination is in the best interest of the child.

1 (b) A petition or motion filed by the Department of Family
2 and Protective Services in a suit for termination of the
3 parent-child relationship is subject to Chapter 10, Civil Practice
4 and Remedies Code, and Rule 13, Texas Rules of Civil Procedure.

5 SECTION 5. Section 261.001(4), Family Code, is amended to
6 read as follows:

7 (4) "Neglect" means an act or failure to act by a
8 person responsible for a child's care, custody, or welfare
9 evidencing the person's blatant disregard for the consequences of
10 the act or failure to act that results in harm to the child or that
11 creates an immediate danger to the child's physical health or
12 safety and:

13 (A) includes:

14 (i) the leaving of a child in a situation
15 where the child would be exposed to an immediate danger [~~a~~
16 ~~substantial risk~~] of physical or mental harm, without arranging for
17 necessary care for the child, and the demonstration of an intent not
18 to return by a parent, guardian, or managing or possessory
19 conservator of the child;

20 (ii) the following acts or omissions by a
21 person:

22 (a) placing a child in or failing to
23 remove a child from a situation that a reasonable person would
24 realize requires judgment or actions beyond the child's level of
25 maturity, physical condition, or mental abilities and that results
26 in bodily injury or an immediate danger [~~a substantial risk~~] of
27 [~~immediate~~] harm to the child;

1 (b) failing to seek, obtain, or follow
2 through with medical care for a child, with the failure resulting in
3 or presenting an immediate danger [~~a substantial risk~~] of death,
4 disfigurement, or bodily injury or with the failure resulting in an
5 observable and material impairment to the growth, development, or
6 functioning of the child;

7 (c) the failure to provide a child
8 with food, clothing, or shelter necessary to sustain the life or
9 health of the child, excluding failure caused primarily by
10 financial inability unless relief services had been offered and
11 refused;

12 (d) placing a child in or failing to
13 remove the child from a situation in which the child would be
14 exposed to an immediate danger [~~a substantial risk~~] of sexual
15 conduct harmful to the child; or

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

21 (iii) the failure by the person responsible
22 for a child's care, custody, or welfare to permit the child to
23 return to the child's home without arranging for the necessary care
24 for the child after the child has been absent from the home for any
25 reason, including having been in residential placement or having
26 run away; or

27 (iv) a negligent act or omission by an

1 employee, volunteer, or other individual working under the auspices
2 of a facility or program, including failure to comply with an
3 individual treatment plan, plan of care, or individualized service
4 plan, that causes or may cause substantial emotional harm or
5 physical injury to, or the death of, a child served by the facility
6 or program as further described by rule or policy; and

7 (B) does not include:

8 (i) the refusal by a person responsible for
9 a child's care, custody, or welfare to permit the child to remain in
10 or return to the child's home resulting in the placement of the
11 child in the conservatorship of the department if:

12 (a) ~~(i)~~ the child has a severe
13 emotional disturbance;

14 (b) ~~(ii)~~ the person's refusal is
15 based solely on the person's inability to obtain mental health
16 services necessary to protect the safety and well-being of the
17 child; and

18 (c) ~~(iii)~~ the person has exhausted
19 all reasonable means available to the person to obtain the mental
20 health services described by Sub-subparagraph (b); or

21 (ii) allowing the child to engage in
22 independent activities that are appropriate and typical for the
23 child's level of maturity, physical condition, developmental
24 abilities, or culture [~~Subparagraph (ii)~~].

25 SECTION 6. Section 262.116(a), Family Code, is amended to
26 read as follows:

27 (a) The Department of Family and Protective Services may not

1 take possession of a child under this subchapter based on evidence
2 that the parent:

3 (1) homeschooled the child;

4 (2) is economically disadvantaged;

5 (3) has been charged with a nonviolent misdemeanor
6 offense other than:

7 (A) an offense under Title 5, Penal Code;

8 (B) an offense under Title 6, Penal Code; or

9 (C) an offense that involves family violence, as
10 defined by Section 71.004 of this code;

11 (4) provided or administered low-THC cannabis to a
12 child for whom the low-THC cannabis was prescribed under Chapter
13 169, Occupations Code; ~~or~~

14 (5) declined immunization for the child for reasons of
15 conscience, including a religious belief;

16 (6) allowed the child to engage in independent
17 activities that are appropriate and typical for the child's level
18 of maturity, physical condition, developmental abilities, or
19 culture; or

20 (7) tested positive for marihuana, unless the
21 department has evidence that the parent's use of marihuana has
22 caused significant impairment to the child's physical or mental
23 health or emotional development.

24 SECTION 7. Section 262.201, Family Code, is amended by
25 amending Subsections (e), (g), (h), and (n) and adding Subsections
26 (g-1) and (q) to read as follows:

27 (e) The court may, for good cause shown, postpone the full

1 adversary hearing for not more than seven days from the date of the
2 attorney's appointment to provide the attorney time to respond to
3 the petition and prepare for the hearing. The court may shorten or
4 lengthen the extension granted under this subsection if the parent
5 and the appointed attorney agree in writing. If the court postpones
6 the full adversary hearing, the court shall extend a temporary
7 order, temporary restraining order, or attachment issued by the
8 court under Section 262.102(a) [~~or Section 262.1131~~] for the
9 protection of the child until the date of the rescheduled full
10 adversary hearing.

11 (g) In a suit filed under Section 262.101 or 262.105, at the
12 conclusion of the full adversary hearing, the court shall order the
13 return of the child to the parent, managing conservator, possessory
14 conservator, guardian, caretaker, or custodian entitled to
15 possession from whom the child is removed unless the court finds
16 sufficient evidence to satisfy a person of ordinary prudence and
17 caution that:

18 (1) there was a danger to the physical health or safety
19 of the child, including a danger that the child would be a victim of
20 trafficking under Section 20A.02 or 20A.03, Penal Code, which was
21 caused by an act or failure to act of the person entitled to
22 possession and for the child to remain in the home is contrary to
23 the welfare of the child;

24 (2) the urgent need for protection required the
25 immediate removal of the child and reasonable efforts, consistent
26 with the circumstances and providing for the safety of the child,
27 were made to eliminate or prevent the child's removal; and

1 (3) reasonable efforts have been made to enable the
2 child to return home, but there is a substantial risk of a
3 continuing danger if the child is returned home.

4 (g-1) In a suit filed under Section 262.101 or 262.105, if
5 the court does not order the return of the child under Subsection
6 (g) and finds that another parent, managing conservator, possessory
7 conservator, guardian, caretaker, or custodian entitled to
8 possession did not cause the immediate danger to the physical
9 health or safety of the child or was not the perpetrator of the
10 neglect or abuse alleged in the suit, the court shall order
11 possession of the child by that person unless the court finds
12 sufficient evidence to satisfy a person of ordinary prudence and
13 caution that, specific to each person entitled to possession:

14 (1) the person cannot be located after the exercise of
15 due diligence by the Department of Family and Protective Services,
16 or the person is unable or unwilling to take possession of the
17 child; or

18 (2) reasonable efforts have been made to enable the
19 person's possession of the child, but possession by that person
20 presents a continuing danger to the physical health or safety of the
21 child caused by an act or failure to act of the person, including a
22 danger that the child would be a victim of trafficking under Section
23 20A.02 or 20A.03, Penal Code.

24 (h) In a suit filed under Section 262.101 or 262.105, if the
25 court finds sufficient evidence to make the applicable finding
26 under Subsection (g) or (g-1) [~~satisfy a person of ordinary~~
27 prudence and caution that there is a continuing danger to the

1 ~~physical health or safety of the child and for the child to remain~~
2 ~~in the home is contrary to the welfare of the child],~~ the court
3 shall issue an appropriate temporary order under Chapter 105.

4 (n) If the [The] court does not order possession of [shall
5 place] a child by a [removed from the child's custodial parent with
6 the child's noncustodial] parent, managing conservator, possessory
7 conservator, guardian, caretaker, or custodian entitled to
8 possession under Subsection (g) or (g-1), the court shall place the
9 child [or] with a relative of the child [if placement with the
10 noncustodial parent is inappropriate,] unless the court finds that
11 the placement with [the noncustodial parent or] a relative is not in
12 the best interest of the child.

13 (g) On receipt of a written request for possession of the
14 child from a parent, managing conservator, possessory conservator,
15 guardian, caretaker, or custodian entitled to possession of the
16 child who was not located before the adversary hearing, the
17 Department of Family and Protective Services shall notify the court
18 and request a hearing to determine whether the parent, managing
19 conservator, possessory conservator, guardian, caretaker, or
20 custodian is entitled to possession of the child under Subsection
21 (g-1).

22 SECTION 8. Section 263.002, Family Code, is amended by
23 amending Subsection (c) and adding Subsection (d) to read as
24 follows:

25 (c) At each permanency hearing before the final order, the
26 court shall review the placement of each child in the temporary
27 managing conservatorship of the department who has not been

1 returned to the child's home. At the end of the hearing, the court
2 shall order the department to return the child to the child's parent
3 or parents unless the court finds, with respect to each parent,
4 that:

5 (1) there is a continuing danger to the physical
6 health or safety of the child; and

7 (2) returning the child to the child's parent or
8 parents [~~The court shall make a finding on whether returning the~~
9 ~~child to the child's home is safe and appropriate, whether the~~
10 ~~return is in the best interest of the child, and whether it]~~ is
11 contrary to the welfare of the child [~~for the child to return home~~].

12 (d) This section does not prohibit the court from rendering
13 an order under Section 263.403.

14 SECTION 9. Section 263.401, Family Code, is amended by
15 adding Subsection (b-3) to read as follows:

16 (b-3) A court shall find under Subsection (b) that
17 extraordinary circumstances necessitate the child remaining in the
18 temporary managing conservatorship of the department if:

19 (1) a parent of a child has made a good faith effort to
20 successfully complete the service plan but needs additional time;
21 and

22 (2) on completion of the service plan the court
23 intends to order the child returned to the parent.

24 SECTION 10. Subchapter E, Chapter 263, Family Code, is
25 amended by adding Section 263.4011 to read as follows:

26 Sec. 263.4011. RENDERING FINAL ORDER; EXTENSION. (a) On
27 timely commencement of the trial on the merits under Section

1 263.401, the court shall render a final order not later than the
2 90th day after the date the trial commences.

3 (b) The 90-day period for rendering a final order under
4 Subsection (a) is not tolled for any recess during the trial.

5 (c) The court may extend the 90-day period under Subsection
6 (a) for the period the court determines necessary if, after a
7 hearing, the court finds good cause for the extension. If the court
8 grants a good cause extension under this subsection, the court
9 shall render a written order specifying:

10 (1) the grounds on which the extension is granted; and

11 (2) the length of the extension.

12 (d) A party may file a mandamus proceeding if the court
13 fails to render a final order within the time required by this
14 section.

15 SECTION 11. Section 263.403(a-1), Family Code, is amended
16 to read as follows:

17 (a-1) Unless the court has granted an extension under
18 Section 263.401(b), the department or the parent may request the
19 court to retain jurisdiction for an additional six months as
20 necessary for a parent to complete the remaining requirements under
21 [in] a service plan [and specified] in a transition monitored
22 return under Subsection (a)(2)(B) [the temporary order that are
23 mandatory for the child's return].

24 SECTION 12. Section 264.203, Family Code, is amended to
25 read as follows:

26 Sec. 264.203. REQUIRED PARTICIPATION. (a) The department
27 may file a suit requesting [Except as provided by Subsection (d),]

1 the court to render a temporary [~~on request of the department may~~]
2 order requiring the parent, managing conservator, guardian, or
3 other member of the [~~subject~~] child's household to:

4 (1) participate in the services for which the
5 department makes a referral or services the department provides or
6 purchases for:

7 (A) alleviating the effects of the abuse or
8 neglect that has occurred; [~~or~~]

9 (B) reducing a continuing danger to the physical
10 health or safety of the child caused by an act or failure to act of
11 the parent, managing conservator, guardian, or other member of the
12 child's household [~~the reasonable likelihood that the child may be~~
13 ~~abused or neglected in the immediate or foreseeable future~~]; or

14 (C) reducing a substantial risk of abuse or
15 neglect caused by an act or failure to act of the parent, managing
16 conservator, guardian, or member of the child's household; and

17 (2) permit the child and any siblings of the child to
18 receive the services.

19 (b) A suit requesting an order under this section may be
20 filed in a court with jurisdiction to hear the suit in the county in
21 which the child is located [~~The department may request the court to~~
22 ~~order the parent, managing conservator, guardian, or other member~~
23 ~~of the child's household to participate in the services whether the~~
24 ~~child resides in the home or has been removed from the home~~].

25 (c) Except as otherwise provided by this subchapter, the
26 suit is governed by the Texas Rules of Civil Procedure applicable to
27 the filing of an original lawsuit [~~If the person ordered to~~

1 ~~participate in the services fails to follow the court's order, the~~
2 ~~court may impose appropriate sanctions in order to protect the~~
3 ~~health and safety of the child, including the removal of the child~~
4 ~~as specified by Chapter 262].~~

5 (d) The petition shall be supported by a sworn affidavit by
6 a person based on personal knowledge and stating facts sufficient
7 to support a finding that:

8 (1) the child has been a victim of abuse or neglect or
9 is at substantial risk of abuse or neglect; and

10 (2) there is a continuing danger to the physical
11 health or safety of the child caused by an act or failure to act of
12 the parent, managing conservator, guardian, or other member of the
13 child's household unless that person participates in services
14 requested by the department [If the court does not order the person
15 to participate, the court in writing shall specify the reasons for
16 not ordering participation].

17 (e) In a suit filed under this section, the court may render
18 a temporary restraining order as provided by Section 105.001.

19 (f) The court shall hold a hearing on the petition not later
20 than the 14th day after the date the petition is filed unless the
21 court finds good cause for extending that date for not more than 14
22 days.

23 (g) The court shall appoint an attorney ad litem to
24 represent the interests of the child immediately after the filing
25 but before the hearing to ensure adequate representation of the
26 child. The attorney ad litem for the child shall have the powers
27 and duties of an attorney ad litem for a child under Chapter 107.

1 (h) The court shall appoint an attorney ad litem to
2 represent the interests of a parent for whom participation in
3 services is being requested immediately after the filing but before
4 the hearing to ensure adequate representation of the parent. The
5 attorney ad litem for the parent shall have the powers and duties of
6 an attorney ad litem for a parent under Section 107.0131.

7 (i) Before commencement of the hearing, the court shall
8 inform each parent of:

9 (1) the parent's right to be represented by an
10 attorney; and

11 (2) for a parent who is indigent and appears in
12 opposition to the motion, the parent's right to a court-appointed
13 attorney.

14 (j) If a parent claims indigence, the court shall require
15 the parent to complete and file with the court an affidavit of
16 indigence. The court may consider additional evidence to determine
17 whether the parent is indigent, including evidence relating to the
18 parent's income, source of income, assets, property ownership,
19 benefits paid in accordance with a federal, state, or local public
20 assistance program, outstanding obligations, and necessary
21 expenses and the number and ages of the parent's dependents. If the
22 court determines the parent is indigent, the attorney ad litem
23 appointed to represent the interests of the parent may continue the
24 representation. If the court determines the parent is not
25 indigent, the court shall discharge the attorney ad litem from the
26 appointment after the hearing and shall order the parent to pay the
27 cost of the attorney ad litem's representation.

1 (k) The court may, for good cause shown, postpone any
2 subsequent proceedings for not more than seven days after the date
3 of the attorney ad litem's discharge to allow the parent to hire an
4 attorney or to provide the parent's attorney time to prepare for the
5 subsequent proceeding.

6 (l) An order may be rendered under this section only after
7 notice and hearing.

8 (m) At the conclusion of the hearing, the court shall deny
9 the petition unless the court finds sufficient evidence to satisfy
10 a person of ordinary prudence and caution that:

11 (1) abuse or neglect has occurred or there is a
12 substantial risk of abuse or neglect or continuing danger to the
13 physical health or safety of the child caused by an act or failure
14 to act of the parent, managing conservator, guardian, or other
15 member of the child's household; and

16 (2) services are necessary to ensure the physical
17 health or safety of the child.

18 (n) If the court renders an order granting the petition, the
19 court shall:

20 (1) state its findings in the order;

21 (2) make appropriate temporary orders under Chapter
22 105 necessary to ensure the safety of the child; and

23 (3) order the participation in specific services
24 narrowly tailored to address the findings made by the court under
25 Subsection (m).

26 (o) If the court finds that a parent, managing conservator,
27 guardian, or other member of the child's household did not cause the

1 continuing danger to the physical health or safety of the child or
2 the substantial risk of abuse or neglect, or was not the perpetrator
3 of the abuse or neglect alleged, the court may not require that
4 person to participate in services ordered under Subsection (n).

5 (p) Not later than the 90th day after the date the court
6 renders an order under this section, the court shall hold a hearing
7 to review the status of each person required to participate in the
8 services and the child and the services provided, purchased, or
9 referred. The court shall set subsequent review hearings every 90
10 days to review the continued need for the order.

11 (q) An order rendered under this section expires on the
12 180th day after the date the order is signed unless the court
13 extends the order as provided by Subsection (r) or (s).

14 (r) The court may extend an order rendered under this
15 section on a showing by the department of a continuing need for the
16 order, after notice and hearing. Except as provided by Subsection
17 (s), the court may extend the order only one time for not more than
18 180 days.

19 (s) The court may extend an order rendered under this
20 section for not more than an additional 180 days only if:

21 (1) the court finds that:

22 (A) the extension is necessary to allow the
23 person required to participate in services under the plan of
24 service time to complete those services;

25 (B) the department made a good faith effort to
26 timely provide the services to the person;

27 (C) the person made a good faith effort to

1 complete the services; and

2 (D) the completion of the services is necessary
3 to ensure the physical health and safety of the child; and

4 (2) the extension is requested by the person or the
5 person's attorney.

6 (t) At any time, a person affected by the order may request
7 the court to terminate the order. The court shall terminate the
8 order on finding the order is no longer needed.

9 SECTION 13. The following provisions of the Family Code are
10 repealed:

11 (1) Section 262.113;

12 (2) Section 262.1131; and

13 (3) Sections 262.201(b) and (j).

14 SECTION 14. Section 161.101, Family Code, as amended by
15 this Act, applies only to a petition or motion filed by the
16 Department of Family and Protective Services on or after the
17 effective date of this Act. A petition or motion filed by the
18 department before that date is governed by the law in effect on the
19 date the petition or motion was filed, and the former law is
20 continued in effect for that purpose.

21 SECTION 15. The changes in law made by this Act apply only
22 to a suit filed by the Department of Family and Protective Services
23 on or after the effective date of this Act. A suit filed by the
24 department before that date is governed by the law in effect on the
25 date the suit was filed, and the former law is continued in effect
26 for that purpose.

27 SECTION 16. This Act takes effect September 1, 2021.