

By: Gates

H.B. No. 2308

Substitute the following for H.B. No. 2308:

By: Wu

C.S.H.B. No. 2308

A BILL TO BE ENTITLED

1 AN ACT
2 relating to procedures in certain suits affecting the parent-child
3 relationship filed by the Department of Family and Protective
4 Services.

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

6 SECTION 1. Section 262.101, Family Code, is amended to read
7 as follows:

8 Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF
9 CHILD. An original suit filed by a governmental entity that
10 requests permission to take possession of a child without prior
11 notice and a hearing must be supported by an affidavit sworn to by a
12 person with personal knowledge and stating facts sufficient to
13 satisfy a person of ordinary prudence and caution that:

14 (1) there is an immediate danger to the physical
15 health or safety of the child or the child has been a victim of
16 neglect or sexual abuse;

17 (2) continuation in the home would be contrary to the
18 child's welfare;

19 (3) there is no time, consistent with the physical
20 health or safety of the child, for a full adversary hearing under
21 Subchapter C; ~~and~~

22 (4) the child would not be adequately protected in the
23 child's home with an order for the removal of the alleged
24 perpetrator under Section 262.1015 or 262.1016 or a protective

1 order issued under Title 4;

2 (5) placing the child with a caregiver under a
3 parental child safety placement agreement authorized by Subchapter
4 L, Chapter 264:

5 (A) was offered but refused;

6 (B) was not possible because there was no time,
7 consistent with the physical health or safety of the child and the
8 nature of the emergency, to conduct the caregiver evaluation; or

9 (C) would pose an immediate danger to the
10 physical health or safety of the child; and

11 (6) reasonable efforts, consistent with the
12 circumstances and providing for the safety of the child, were made
13 to prevent or eliminate the need for the removal of the child.

14 SECTION 2. Subchapter B, Chapter 262, Family Code, is
15 amended by adding Section 262.1016 to read as follows:

16 Sec. 262.1016. AGREED ORDER FOR REMOVAL OF ALLEGED
17 PERPETRATOR. (a) An alleged perpetrator of abuse or neglect may
18 agree in writing to an order under Section 262.1015 requiring the
19 alleged perpetrator to leave the residence of the child. An
20 agreement under this section is subject to the approval of the
21 court.

22 (b) An agreed order under this section must contain the
23 following statement in boldface type and capital letters: "YOUR
24 AGREEMENT TO THIS ORDER IS NOT AN ADMISSION OF CHILD ABUSE OR
25 NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION
26 OF CHILD ABUSE OR NEGLECT."

27 (c) An agreed order under this section may not be used

1 against an alleged perpetrator as an admission of child abuse or
2 neglect.

3 (d) An agreed order under this section is enforceable
4 civilly or criminally but is not enforceable as a contract.

5 (e) At any time, a person affected by an agreed order under
6 this section may request the court to terminate the order. The court
7 shall terminate the agreed order on finding the order is no longer
8 needed.

9 SECTION 3. Section 262.102(a), Family Code, is amended to
10 read as follows:

11 (a) Before a court may, without prior notice and a hearing,
12 issue a temporary order for the conservatorship of a child under
13 Section 105.001(a)(1) or a temporary restraining order or
14 attachment of a child authorizing a governmental entity to take
15 possession of a child in a suit brought by a governmental entity,
16 the court must find that:

17 (1) there is an immediate danger to the physical
18 health or safety of the child or the child has been a victim of
19 neglect or sexual abuse;

20 (2) continuation in the home would be contrary to the
21 child's welfare;

22 (3) there is no time, consistent with the physical
23 health or safety of the child and the nature of the emergency, for a
24 full adversary hearing under Subchapter C; ~~and~~

25 (4) the child would not be adequately protected in the
26 child's home with an order for the removal of the alleged
27 perpetrator under Section 262.1015 or 262.1016 or a protective

1 order issued under Title 4;

2 (5) placing the child with a caregiver under a
3 parental child safety placement agreement authorized by Subchapter
4 L, Chapter 264:

5 (A) was offered but refused;

6 (B) was not possible because there was no time,
7 consistent with the physical health or safety of the child and the
8 nature of the emergency, to conduct the caregiver evaluation; or

9 (C) would pose an immediate danger to the
10 physical health or safety of the child; and

11 (6) reasonable efforts, consistent with the
12 circumstances and providing for the safety of the child, were made
13 to prevent or eliminate the need for removal of the child.

14 SECTION 4. Section 262.105(b), Family Code, is amended to
15 read as follows:

16 (b) An original suit filed by a governmental entity after
17 taking possession of a child under Section 262.104 must be
18 supported by an affidavit stating facts sufficient to satisfy a
19 person of ordinary prudence and caution that:

20 (1) based on the affiant's personal knowledge or on
21 information furnished by another person corroborated by the
22 affiant's personal knowledge, one of the following circumstances
23 existed at the time the child was taken into possession:

24 (A) there was an immediate danger to the physical
25 health or safety of the child;

26 (B) the child was the victim of sexual abuse or of
27 trafficking under Section 20A.02 or 20A.03, Penal Code;

1 (C) the parent or person who had possession of
2 the child was using a controlled substance as defined by Chapter
3 481, Health and Safety Code, and the use constituted an immediate
4 danger to the physical health or safety of the child; or

5 (D) the parent or person who had possession of
6 the child permitted the child to remain on premises used for the
7 manufacture of methamphetamine; and

8 (2) based on the affiant's personal knowledge:

9 (A) continuation of the child in the home would
10 have been contrary to the child's welfare;

11 (B) there was no time, consistent with the
12 physical health or safety of the child, for a full adversary hearing
13 under Subchapter C; ~~and~~

14 (C) the child would not be adequately protected
15 in the child's home with an order for the removal of the alleged
16 perpetrator under Section 262.1015 or 262.1016 or a protective
17 order issued under Title 4;

18 (D) placing the child with a caregiver under a
19 parental child safety placement agreement authorized by Subchapter
20 L, Chapter 264:

21 (i) was offered but refused;

22 (ii) was not possible because there was no
23 time, consistent with the physical health or safety of the child and
24 the nature of the emergency, to conduct the caregiver evaluation;
25 or

26 (iii) would pose an immediate danger to the
27 physical health or safety of the child; and

1 (E) reasonable efforts, consistent with the
2 circumstances and providing for the safety of the child, were made
3 to prevent or eliminate the need for the removal of the child.

4 SECTION 5. Section 262.107(a), Family Code, is amended to
5 read as follows:

6 (a) The court shall order the return of the child at the
7 initial hearing regarding a child taken in possession without a
8 court order by a governmental entity unless the court is satisfied
9 that:

10 (1) the evidence shows that one of the following
11 circumstances exists:

12 (A) there is a continuing danger to the physical
13 health or safety of the child if the child is returned to the
14 parent, managing conservator, possessory conservator, guardian,
15 caretaker, or custodian who is presently entitled to possession of
16 the child;

17 (B) the child has been the victim of sexual abuse
18 or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one
19 or more occasions and that there is a substantial risk that the
20 child will be the victim of sexual abuse or of trafficking in the
21 future;

22 (C) the parent or person who has possession of
23 the child is currently using a controlled substance as defined by
24 Chapter 481, Health and Safety Code, and the use constitutes an
25 immediate danger to the physical health or safety of the child; or

26 (D) the parent or person who has possession of
27 the child has permitted the child to remain on premises used for the

1 manufacture of methamphetamine;

2 (2) continuation of the child in the home would be
3 contrary to the child's welfare; ~~and~~

4 (3) the child would not be adequately protected in the
5 child's home with an order for the removal of the alleged
6 perpetrator under Section 262.1015 or 262.1016 or a protective
7 order issued under Title 4;

8 (4) placing the child with a caregiver under a
9 parental child safety placement agreement authorized by Subchapter
10 L, Chapter 264:

11 (A) was offered but refused;

12 (B) was not possible because there was no time,
13 consistent with the physical health or safety of the child and the
14 nature of the emergency, to conduct the caregiver evaluation; or

15 (C) would pose an immediate danger to the
16 physical health or safety of the child; and

17 (5) reasonable efforts, consistent with the
18 circumstances and providing for the safety of the child, were made
19 to prevent or eliminate the need for removal of the child.

20 SECTION 6. The changes in law made by this Act apply to a
21 suit affecting the parent-child relationship that is filed on or
22 after the effective date of this Act. A suit filed before the
23 effective date of this Act is governed by the law in effect on the
24 date that the suit is filed, and the former law is continued in
25 effect for that purpose.

26 SECTION 7. This Act takes effect September 1, 2021.