

By: Gates

H.B. No. 5193

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain procedures in 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 102.008(b), Family Code, is amended to
7 read as follows:

8 (b) The petition must include:

9 (1) a statement that:

10 (A) the court in which the petition is filed has
11 continuing, exclusive jurisdiction or that no court has continuing
12 jurisdiction of the suit; or

13 (B) in a suit in which adoption of a child is
14 requested, the court in which the petition is filed has
15 jurisdiction of the suit under Section 103.001(b);

16 (2) the name and date of birth of the child, except
17 that if adoption of a child is requested, the name of the child may
18 be omitted;

19 (3) the full name of the petitioner and the
20 petitioner's relationship to the child or the fact that no
21 relationship exists;

22 (4) the names of the parents, except in a suit in which
23 adoption is requested;

24 (5) the name of the managing conservator, if any, or

1 the child's custodian, if any, appointed by order of a court of
2 another state or country;

3 (6) the names of the guardians of the person and estate
4 of the child, if any;

5 (7) the names of possessory conservators or other
6 persons, if any, having possession of or access to the child under
7 an order of the court;

8 (8) the name of an alleged father of the child or a
9 statement that the identity of the father of the child is unknown;

10 (9) a full description and statement of value of all
11 property owned or possessed by the child;

12 (10) a statement describing what action the court is
13 requested to take concerning the child and the statutory grounds on
14 which the request is made;

15 (11) in a suit under Chapter 161, 261, or 262, a
16 separate statement describing the particular statutory grounds of
17 abuse or neglect alleged as to each applicable child;

18 (12) a statement as to whether, in regard to a party to
19 the suit or a child of a party to the suit:

20 (A) there is in effect:

21 (i) a protective order under Title 4;

22 (ii) a protective order under Subchapter A,
23 Chapter 7B, Code of Criminal Procedure; or

24 (iii) an order for emergency protection
25 under Article 17.292, Code of Criminal Procedure; or

26 (B) an application for an order described by
27 Paragraph (A) is pending; and

1 (13) [~~12~~] any other information required by this
2 title.

3 SECTION 2. Chapter 104, Family Code, is amended by adding
4 Sections 104.009 and 104.010 to read as follows:

5 Sec. 104.009. ADMISSIBILITY OF CERTAIN EVIDENCE. Except as
6 otherwise provided by law, Article 38.23, Code of Criminal
7 Procedure, applies to the admissibility of evidence in a suit filed
8 by the Department of Family and Protective Services under Chapter
9 161 or 262 in the same manner as if the person responsible for a
10 child's care, custody, or welfare was a defendant in a criminal
11 prosecution.

12 Sec. 104.010. DUTY TO DISCLOSE CERTAIN INFORMATION TO
13 PARENT. (a) In a suit filed by the Department of Family and
14 Protective Services under Chapter 161, 261, or 262 against a person
15 responsible for a child's care, custody, or welfare, the department
16 and the attorney for the state shall disclose to the person any
17 exculpatory, impeachment, or mitigating document, item, or
18 information in the possession, custody, or control of the state
19 that tends to disprove an allegation against the person as soon as
20 practicable after obtaining the document, item, or information.

21 (b) The Department of Family and Protective Services and the
22 attorney for the state shall disclose a document, item, or
23 information under this section in a manner consistent with any laws
24 protecting the confidentiality of any person who made a report on
25 which the suit is based.

26 SECTION 3. Subchapter D, Chapter 261, Family Code, is
27 amended by adding Section 261.3111 to read as follows:

1 Sec. 261.3111. NOTICE REQUIRED ON INITIAL CONTACT WITH
2 INDIVIDUAL SUBJECT TO INVESTIGATION. (a) At the time of the
3 initial contact with an individual subject to an investigation
4 under this chapter, or with the individual's legal representative,
5 the department shall:

6 (1) notify the individual or the legal representative
7 of the complaints or allegations made against the individual by
8 reading or otherwise providing the complete report made concerning
9 the individual in a manner that is consistent with any laws
10 protecting the rights of the informant; and

11 (2) disclose to the individual or the legal
12 representative whether the report of abuse or neglect was made
13 anonymously.

14 (b) The department shall give the notice required by
15 Subsection (a) regardless of the manner in which the initial
16 contact is made, including contact by telephone, by e-mail or other
17 electronic communication, or in person.

18 (c) The department shall provide a written copy of the
19 notice required by this section on request of the individual
20 subject to an investigation under this chapter or the individual's
21 legal representative.

22 SECTION 4. Sections 262.201(g) and (h), Family Code, are
23 amended to read as follows:

24 (g) In a suit filed under Section 262.101 or 262.105, at the
25 conclusion of the full adversary hearing, the court shall order the
26 return of the child to the parent, managing conservator, possessory
27 conservator, guardian, caretaker, or custodian entitled to

1 possession from whom the child is removed unless the court finds by
2 a preponderance of the evidence [~~sufficient evidence to satisfy a~~
3 ~~person of ordinary prudence and caution~~] that:

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

10 (2) the urgent need for protection required the
11 immediate removal of the child and reasonable efforts, consistent
12 with the circumstances and providing for the safety of the child,
13 were made to eliminate or prevent the child's removal; and

14 (3) reasonable efforts have been made to enable the
15 child to return home, but a preponderance of the evidence shows that
16 there is a substantial risk of a continuing danger if the child is
17 returned home.

18 (h) In a suit filed under Section 262.101 or 262.105, if the
19 court makes [~~finds sufficient evidence to make~~] the applicable
20 finding under Subsection (g) or (g-1) by a preponderance of the
21 evidence, the court shall issue an appropriate temporary order
22 under Chapter 105.

23 SECTION 5. Subchapter C, Chapter 262, Family Code, is
24 amended by adding Section 262.207 to read as follows:

25 Sec. 262.207. EXAMINATION OF CHILD. On the motion of a
26 person responsible for a child's care, custody, or welfare being
27 investigated for abuse or neglect of the child, the court shall

1 render an order allowing an examination of the child to be performed
2 at least 72 hours before the full adversary hearing. The
3 examination may include medical, dental, educational,
4 developmental, psychological, or psychiatric evaluations or
5 assessments by providers chosen by the person.

6 SECTION 6. Section 264.408, Family Code, is amended by
7 adding Subsection (d-2) to read as follows:

8 (d-2) In a suit filed by the department under Chapter 161 or
9 262, the department shall produce an electronic recording of an
10 interview described by Subsection (d) to the person responsible for
11 a child's care, custody, or welfare being investigated for abuse or
12 neglect. A court may not deny a request by the person to copy,
13 photograph, duplicate, or otherwise reproduce an electronic
14 recording of the interview.

15 SECTION 7. The changes in law made by this Act apply only to
16 a suit affecting the parent-child relationship filed on or after
17 the effective date of this Act. A suit affecting the parent-child
18 relationship filed before the effective date of this Act is
19 governed by the law in effect on the date the suit was filed, and the
20 former law is continued in effect for that purpose.

21 SECTION 8. The changes in law made by this Act apply only to
22 a report of suspected abuse or neglect made on or after the
23 effective date of this Act. A report of suspected abuse or neglect
24 made before that date is governed by the law in effect on the date
25 the report was made, and that law is continued in effect for that
26 purpose.

27 SECTION 9. This Act takes effect September 1, 2023.