

BILL ANALYSIS

C.S.H.B. 1571

By: Dutton

Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Department of Protective and Regulatory Services (“DPRS”) operates the Child Protective Services program authorized by the Texas Family Code to investigate abuse and neglect of children by their caretakers. In cases where a child is a serious risk of injury or harm, PRS may remove the child from the home and petition the court for conservatorship. If the child cannot return to the home due to the parents’ failure to meet court mandated requirements, the court may order termination of parental rights and the child may be adopted.

The Family Code provisions contain many sections covering other “family issues” such as divorce and child custody, as well as termination and adoption statutes that apply to private adoptions. Due to comprehensive scope of the Family Code, there are instances when the statutory provisions need to clarify the distinct functions of Child Protective Services. C.S.H.B.1571 amends many provisions of the Family Code to distinguish and clarify provisions impacting Child Protective Services.

RULEMAKING AUTHORITY

It is the committee’s opinion that rulemaking authority is expressly granted to the Department of Protective and Regulatory Services in SECTION 10 (Section 264.101, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

- Section 1.** Amends Section 155.201, Family Code, by adding (d) Section 262.203 which applies to the transfer of a suit filed by the Department of Protective and Regulatory Services under Chapter 262.
- Section 2.** Amends Section 155.202(a), Family Code to provide for the discretionary transfer in suits affecting parent child relationships in a proceeding under this subchapter or Section 262.203.
- Section 3.** Amends Section 162.005, Subsection (f), of the Family Code and adds Subsection (g) to provide that supplemental medical, psychological, and psychiatric information be furnished to the adoptive parents; and that information be filed with the central registry maintained by the bureau of vital statistics if no original report was filed or if the original report was filed with a child-placing agency that is no longer operating. Additionally, that supplemental information must be retained for as long as the original report is required to be retained.
- Section 4.** Amends 162.006, (b) and (e), and adds Subsection (f) to provide the bureau of vital statistics the authority to maintain and retain adoption records. Provides that Section 261.201 prevails where there is conflict between 162.006, with respect to the departments’ duty to edit documents, records, and other information.

- Section 5.** Amends Section 261.002 (a), Family Code, by adding language which reads “or exploitation.”
- Section 6.** Amends Section 261.004, Family Code, to eliminate the requirement for the department to provide the number of children reported to the department as having been abused and neglected. Additionally, amends Section 261.004 (b), to provide that the department shall report the number of initial phone calls received by the department alleging abuse or neglect of a child, cases in which the department found reason to believe that abuse or neglect occurred, the number of cases in which the department was unable to determine whether abuse or neglect occurred, the number of cases which the department determined the allegations were unfounded, or children who were the subjects of the reports and removed from their homes.
- Section 7.** Amends Section 261.103(a), Family Code, by adding language to provide that a report shall be made to the state agency that operates, licenses, certifies, or registers, or lists the facility or family home in which the alleged abuse or neglect occurred.
- Section 8.** Amends Section 261.401(b), Family Code, which provides that a state agency that operates, licenses, certifies, or registers, or lists a facility or family home in which children are located shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or family home.
- Section 9.** Amends Section 262.101, Family Code, by adding language that allows an affidavit to include knowledge acquired from the department’s investigation or other business records.
- Section 10.** Amends Section 262.107(a), Family Code, by deleting language that reads “is satisfied” and adding the phrase, “finds sufficient evidence to satisfy a person of ordinary prudence and caution that.”
- Section 11.** Amends Section 262.112(b) and (c), and adds (d), (e), and (f), Family Code, which provides that the department, parent, guardian, or other party to a proceeding is entitled to an expedited appeal on a ruling by a court that the child may not be removed from the child’s home or if the department has already removed the child, a ruling by a court that the department must return the child to the child’s home. Additionally, Subsections (b), (d), and (e) provides time frames applicable for any party regarding an expedited appeal to file notice, a trial record, and a brief with the appellate court. The appellate court must render a final order on the appeal by the seventh day after the notice of appeal is filed.
- Section 12.** Amends Section 263.405(a), Family Code, to mandate that the appeal shall be set for submission in the appellate court on the first submission date on or after the 31st day after the date the last brief is filed in the appeal. Adds language to Section 263.405(b) that requires that a statement of the point or points on which the party intends to appeal must be combined with a motion for a new trial, motion to modify, correct, or reform the judgment, and that these post trial motions are considered overruled if the court does not render a signed order on the motion before the 36th day after the date the trial judge signed the final order. Amends subsection (c) to provide that an affidavit of indigence must be filed in accordance with Rule 20, Texas Rules of Appellate Procedure and deletes subsection (d). Amends (e) to refer to Rule 20.1, Texas Rules of Appellate Procedure for appeal of a ruling on the claim of indigency and deletes the current language for handling an indigency claim. Amends subsection (f) clarifying when the appellate record must be filed. Amends (g) to apply to when an appellant may appeal a court’s order denying the claim of indigence by filing a written request for the reporter’s record and the clerk’s record, both of which shall be provided without advance payment, not later than the third day after the date the trial court rendered the order and by filing both records with the appellate court not later than the 10th day after the date the trial court rendered the order.

The clerk’s record may include only those items pertaining to the issue of indigency, and the reporter’s record may include only a record of the hearings conducted by the trial court on the issue of indigency.

- Section 13.** Amends Section 264.101(d), Family Code, to allow DPRS to use its current rulemaking authority to establish criteria and guidelines for the payment of foster care, including medical care, subject to the availability of funds, for a child and for providing care for a child after the child becomes 18 years of age if the child is attending high school, an institution of higher education, or a vocational or technical program; or is medically fragile or has complex medical needs.
- Section 14.** Repeals Sections 162.308 and 264.108 of the Family Code.
- Section 15.** Amends Sections 162.005 and 162.006, Family Code, to apply only to records regarding a child placed for adoption that are provided to a person on or after the effective date of this Act.
- Section 16.** Amends Section 261.002, Family Code, to apply only to reports of exploitation of a child made on or after the effective date of this Act.
- Section 17.** Amends Sections 262.101 and 262.107, Family Code, to apply only to a suit affecting the parent-child relationship requesting an order to take possession of a child that is filed on or after the effective date of this Act.
- Section 18.** Amends Sections 262.112 and 263.405, Family Code, to apply only to the appeal of a trial court ruling or order that becomes final on or after the effective date of this Act.
- Section 19.** This Act takes effect September 1, 2003.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.1571, modifies the original H.B.1571 by providing that supplemental adoption information is required to be filed with the Bureau of Vital Statistics when the original adoption agency is defunct. C.S.H.B.1571 further requires that the agency which regulates child care operations, and the entity which investigates allegations of abuse, neglect, or exploitation of a child, include the category of listed family homes under the jurisdiction of the Department of Protective and Regulatory Services.