

By: Dutton, Goodman

H.B. No. 1571

Substitute the following for H.B. No. 1571:

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C.S.H.B. No. 1571

A BILL TO BE ENTITLED

AN ACT

relating to certain suits affecting the parent-child relationship of, certain records regarding, and foster care payments for certain children.

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

SECTION 1. Section 155.201, Family Code, is amended by adding Subsection (d) to read as follows:

(d) Section 262.203 applies to the transfer of a suit filed by the Department of Protective and Regulatory Services under Chapter 262.

SECTION 2. Section 155.202(a), Family Code, is amended to read as follows:

(a) If the basis of a motion to transfer a proceeding under this subchapter or Section 262.203 is that the child resides in another county, the court may deny the motion if it is shown that the child has resided in that county for less than six months at the time the proceeding is commenced.

SECTION 3. Section 162.005, Family Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) The department, licensed child-placing agency, parent, guardian, person, or entity who prepares and files the original report is required to furnish supplemental medical, psychological, and psychiatric information to the adoptive parents if that

1 information becomes available and to file the supplemental
2 information:

- 3 (1) where the original report is filed; or
4 (2) with the central registry maintained by the bureau
5 of vital statistics if no original report was filed or if the
6 original report was filed with a child-placing agency that is no
7 longer operating.

8 (g) The supplemental information filed as required by
9 Subsection (f) must ~~[shall]~~ be retained for as long as the original
10 report is required to be retained.

11 SECTION 4. Section 162.006, Family Code, is amended by
12 amending Subsections (b) and (e) and adding Subsection (f) to read
13 as follows:

14 (b) The department, bureau of vital statistics, licensed
15 child-placing agency, or court retaining a copy of the report shall
16 provide a copy of the report that has been edited as required by
17 this section or Section 261.201 ~~[to protect the identity of the~~
18 ~~birth parents and any other person whose identity is confidential]~~
19 to the following persons on request:

- 20 (1) an adoptive parent of the adopted child;
21 (2) the managing conservator, guardian of the person,
22 or legal custodian of the adopted child;
23 (3) the adopted child, after the child is an adult;
24 (4) the surviving spouse of the adopted child if the
25 adopted child is dead and the spouse is the parent or guardian of a
26 child of the deceased adopted child; or
27 (5) a progeny of the adopted child if the adopted child

1 is dead and the progeny is an adult.

2 (e) The report shall be retained for 99 years from the date
3 of the adoption by the department or licensed child-placing agency
4 placing the child for adoption. If the agency ceases to function as
5 a child-placing agency, the agency shall transfer all the reports
6 to the bureau of vital statistics ~~[department]~~ or, after giving
7 notice to the bureau of vital statistics ~~[department]~~, to a
8 transferee agency that is assuming responsibility for the
9 preservation of the agency's adoption records. If the child has not
10 been placed for adoption by the department or a licensed
11 child-placing agency and if the child is being adopted by a person
12 other than the child's stepparent, grandparent, aunt, or uncle by
13 birth, marriage, or prior adoption, the person or entity who places
14 the child for adoption shall file the report with the bureau of
15 vital statistics ~~[department]~~, which shall retain the copies for 99
16 years from the date of the adoption.

17 (f) To the extent of any conflict between this section and
18 Section 261.201 with respect to the department's duty to edit
19 documents, records, and other information, Section 261.201
20 prevails.

21 SECTION 5. Section 261.002(a), Family Code, is amended to
22 read as follows:

23 (a) The department shall establish and maintain in Austin a
24 central registry of reported cases of child abuse, ~~[or]~~ neglect, or
25 exploitation.

26 SECTION 6. Section 261.004, Family Code, is amended to read
27 as follows:

Sec. 261.004. STATISTICS OF ABUSE AND NEGLECT OF CHILDREN.

(a) The department shall prepare and disseminate statistics by county relating to the department's activities under this subtitle and include the information specified in Subsection (b) in an annual report covering the preceding fiscal year. The report must be made available to the public.

(b) The department shall report the following information, to the extent the information is available from the department's records:

(1) the number of initial phone calls received by the department alleging abuse or ~~and~~ neglect of a child;

~~(2) [the number of children reported to the department as having been abused and neglected];~~

~~[(3)]~~ the number of reports received by the department alleging abuse or neglect of a child and assigned by the department for investigation;

(3) ~~[(4)]~~ of the reports ~~[children]~~ to which ~~[whom]~~ Subdivision (2) applies:

(A) the number of cases in which the department found reason to believe that abuse or neglect occurred ~~[for whom the report was substantiated]~~;

(B) the number of cases in which the department was unable to determine whether abuse or neglect occurred ~~[for whom the report was unsubstantiated]~~;

(C) the number of cases in which the department determined the allegations were unfounded ~~[for whom the report was determined to be false]~~;

1 (D) the number of children who were the subjects
2 of the reports and who did not receive services, other than
3 investigative services, from the department under a state or
4 federal program;

5 (E) the number of children who were the subjects
6 of the reports and who received services[, ~~including preventative~~
7 ~~services,~~] from the department under a state or federal program;
8 and

9 (F) the number of children who were removed from
10 their homes [~~the child's home~~] during the preceding fiscal year;

11 (4) [~~(5)~~] the number of families in which, after an
12 investigation of a report alleging abuse or neglect of a child, the
13 child was not removed, but the child or family received services
14 from the department;

15 (5) [~~(6)~~] the number of children who died during the
16 preceding year as a result of child abuse or neglect;

17 (6) [~~(7)~~] of the children to whom Subdivision (5)
18 [~~(6)~~] applies, the number who were in the department's
19 conservatorship [~~foster care~~] at the time of death;

20 (7) [~~(8)~~] the number of child protective services
21 workers responsible for report intake, assessment, or
22 investigation, categorized by department region;

23 (8) [~~(9)~~] the response time by the department with
24 respect to initiating [~~conducting~~] an [~~initial~~] investigation of a
25 report of child abuse or neglect;

26 (9) [~~(10)~~] ~~the response time by the department with~~
27 ~~respect to commencing services to families and children for whom an~~

~~allegation of abuse or neglect has been made,~~

~~[(11)]~~ the number of children who were returned to their families or who received family preservation services and who, before the fifth anniversary of the date of return or receipt, were the victims of substantiated reports of child abuse or neglect, including abuse or neglect resulting in the death of the child; and

(10) [(12)] the number of children for whom the department has been appointed:

(A) temporary managing conservator;

(B) permanent managing conservator, and the parent-child relationship of each of the child's parents with respect to the child has not been terminated; and

(C) permanent managing conservator, and the parent-child relationship of each of the child's parents with respect to the child has been terminated ~~[cases pursued by the department in each stage of the judicial process, including civil and criminal proceedings and the results of each proceeding, and~~

~~[(13) the number of children for whom a person was appointed by the court to represent the best interests of the child and the average number of out-of-court contacts between the person and the child].~~

(c) The department shall compile the information specified in Subsection (b) for the preceding fiscal year in a report to be submitted to the legislature and the general public not later than March ~~[February]~~ 1 of each year.

SECTION 7. Section 261.103(a), Family Code, is amended to read as follows:

1 (a) Except as provided by Subsection (b) and Section
2 261.405, a report shall be made to:

3 (1) any local or state law enforcement agency;

4 (2) the department if the alleged or suspected abuse
5 involves a person responsible for the care, custody, or welfare of
6 the child;

7 (3) the state agency that operates, licenses,
8 certifies, ~~or~~ registers, or lists the facility or family home in
9 which the alleged abuse or neglect occurred; or

10 (4) the agency designated by the court to be
11 responsible for the protection of children.

12 SECTION 8. Section 261.401(b), Family Code, is amended to
13 read as follows:

14 (b) A state agency that operates, licenses, certifies, ~~or~~
15 registers, or lists a facility or family home in which children are
16 located shall make a prompt, thorough investigation of a report
17 that a child has been or may be abused, neglected, or exploited in
18 the facility or family home. The primary purpose of the
19 investigation shall be the protection of the child.

20 SECTION 9. Section 262.101, Family Code, is amended to read
21 as follows:

22 Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF
23 CHILD. An original suit filed by a governmental entity that
24 requests permission to take possession of a child without prior
25 notice and a hearing must be supported by an affidavit sworn to by a
26 person with personal knowledge, including knowledge acquired from
27 the department's investigation or other business records. The

1 affidavit must state [~~and stating~~] facts sufficient to satisfy a
2 person of ordinary prudence and caution that:

3 (1) there is an immediate danger to the physical
4 health or safety of the child or the child has been a victim of
5 neglect or sexual abuse and that continuation in the home would be
6 contrary to the child's welfare;

7 (2) there is no time, consistent with the physical
8 health or safety of the child, for a full adversary hearing under
9 Subchapter C; and

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

13 SECTION 10. Section 262.107(a), Family Code, is amended to
14 read as follows:

15 (a) The court shall order the return of the child at the
16 initial hearing regarding a child taken in possession without a
17 court order by a governmental entity unless the court finds
18 sufficient evidence to satisfy a person of ordinary prudence and
19 caution [~~is satisfied~~] that:

20 (1) there is a continuing danger to the physical
21 health or safety of the child if the child is returned to the
22 parent, managing conservator, possessory conservator, guardian,
23 caretaker, or custodian who is presently entitled to possession of
24 the child or the evidence shows that the child has been the victim
25 of sexual abuse on one or more occasions and that there is a
26 substantial risk that the child will be the victim of sexual abuse
27 in the future;

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

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

6 SECTION 11. Section 262.112, Family Code, is amended by
7 amending Subsections (b) and (c) and adding Subsections (d), (e),
8 and (f) to read as follows:

9 (b) In any proceeding in which an expedited hearing is held
10 under Subsection (a), the department, parent, guardian, or other
11 party to the proceeding is entitled to an expedited appeal on a
12 ruling by a court that the child may not be removed from the child's
13 home or, if the department has already removed the child, a ruling
14 by a court that the department must return the child to the child's
15 home.

16 (c) If a child is returned to the child's home after a
17 removal in which the department was entitled to an expedited
18 hearing under this section and the child is the subject of a
19 subsequent allegation of abuse or neglect, the department or any
20 other interested party is entitled to an expedited hearing on the
21 removal of the child from the child's home in the manner provided by
22 Subsection (a) and to an expedited appeal as ~~[in the manner]~~
23 provided by Subsections ~~[Subsection]~~ (b), (d), and (e).

24 (d) Not later than the first day after the date a trial court
25 makes a ruling from which a party is entitled to an expedited appeal
26 under Subsection (b), the party must file a notice of expedited
27 appeal with the trial court and the appellate court. A docket entry

1 reflecting the trial court's ruling is a final, appealable order
2 for purposes of this section, and the trial court's failure to
3 render a signed, written order does not affect a party's right to
4 appeal. Not later than the third day after the date notice of
5 expedited appeal is filed, the trial record must be filed in the
6 appellate court. Not later than the second day after the date the
7 trial record is filed, the appellant must file a brief with the
8 appellate court. The appellee may file a response brief. Failure
9 of the appellant or appellee to file a brief may not affect or delay
10 the hearing on the appeal. The appellate court may not grant an
11 extension to any party.

12 (e) The appellate court, regardless of whether a request for
13 oral argument is granted, shall render a final order or judgment on
14 an appeal under Subsection (d) not later than the earlier of:

15 (1) the second day after the date the appellant filed
16 the appellate brief with the appellate court; or

17 (2) the seventh day after the date the appellant filed
18 the notice of appeal, if the appellant did not file an appellate
19 brief.

20 (f) In this section, "expedited hearing" includes any
21 emergency or initial hearing held before a full adversary hearing
22 under Section 262.201 or a hearing under Section 262.205.

23 SECTION 12. Section 263.405, Family Code, as added by
24 Chapter 1090, Acts of the 77th Legislature, Regular Session, 2001,
25 is amended to read as follows:

26 Sec. 263.405. APPEAL OF FINAL ORDER. (a) An appeal of a
27 final order rendered under this subchapter is governed by the rules

of the supreme court for accelerated appeals in civil cases and the procedures provided by this section. The appeal shall be set for submission on the first submission date on or after the 31st day after the date the last brief on the appeal is filed. The appellate court shall render its final order or judgment with the least possible delay.

(b) Not later than the 15th day after the date a final order is signed by the trial judge, a party intending to appeal the order must file with the trial court a statement of the point or points on which the party intends to appeal. The statement must ~~may~~ be combined with a motion for a new trial or a motion to modify, correct, or reform the judgment, if any. A motion for a new trial or motion to modify, correct, or reform the judgment is considered to be overruled if the court in which the motion is made does not render a signed order on the motion before the 36th day after the date the trial judge signed the final order.

(c) A motion for a new trial, a request for findings of fact and conclusions of law, or any other post-trial motion in the trial court does not extend the deadline for filing a notice of appeal under Rule 26.1(b), Texas Rules of Appellate Procedure, or the deadline for filing an affidavit of indigence in accordance with ~~under~~ Rule 20, Texas Rules of Appellate Procedure.

~~[(d) The trial court shall hold a hearing not later than the 30th day after the date the final order is signed to determine whether:~~

~~[(1) a new trial should be granted,~~

~~[(2) a party's claim of indigence, if any, should be~~

1 ~~sustained, and~~

2 ~~[(3) the appeal is frivolous as provided by Section~~
3 ~~13.003(b), Civil Practice and Remedies Code.]~~

4 (e) If a party claims indigency and requests the appointment
5 of an attorney, the party must file an affidavit of indigence in
6 accordance with Rule 20.1, Texas Rules of Appellate Procedure,
7 which governs an appeal of a ruling on the claim of indigency,
8 except that the trial court may not extend the time to conduct a
9 hearing on a contest to the claim of indigency ~~[the court shall~~
10 ~~require the person to file an affidavit of indigency and shall hear~~
11 ~~evidence to determine the issue of indigency. If the court does not~~
12 ~~render a written order denying the claim of indigence or requiring~~
13 ~~the person to pay partial costs before the 36th day after the date~~
14 ~~the final order being appealed is signed, the court shall consider~~
15 ~~the person to be indigent and shall appoint counsel to represent the~~
16 ~~person].~~

17 (f) The appellate record must be filed in the appellate
18 court not later than the 60th day after the date the final order is
19 signed by the trial judge, unless the trial court~~[, after a~~
20 ~~hearing,~~ grants a new trial or sustains a contest to a ruling on a
21 claim of indigency ~~[denies a request for a trial court record at no~~
22 ~~cost].~~

23 (g) The appellant may appeal the court's order denying the
24 appellant's claim of indigence ~~[or the court's finding that the~~
25 ~~appeal is frivolous]~~ by filing a written request for the reporter's
26 record and the clerk's record, both of which shall be provided
27 without advance payment, not later than the third day after the date

1 the trial court rendered the order and by filing both records with
2 the appellate court [~~the reporter's record and clerk's record of the~~
3 ~~hearing held under this section, both of which shall be provided~~
4 ~~without advance payment,~~] not later than the 10th day after the date
5 the trial court rendered the order [~~makes the decision~~]. The
6 clerk's record may include only those items pertaining to the issue
7 of indigency, and the reporter's record may include only a record of
8 the hearings conducted by the trial court on the issue of indigency.
9 The appellate court shall review the records and may require the
10 parties to file appellate briefs on the issues presented, but may
11 not hear oral argument on the issues. The appellate court shall
12 render appropriate orders after reviewing the records and appellate
13 briefs, if any.

14 (h) Except on a showing of good cause, the appellate court
15 may not extend the time for filing a record or appellate brief.

16 SECTION 13. Section 264.101(d), Family Code, is amended to
17 read as follows:

18 (d) The Board of Protective and Regulatory Services may
19 adopt rules that establish criteria and guidelines for the payment
20 of foster care, including medical care, subject to the availability
21 of funds, for a child and for providing care for a child after the
22 child becomes 18 years of age if the child is:

23 (1) regularly attending high school, an institution of
24 higher education, or a vocational or technical program; or

25 (2) medically fragile or has complex medical needs.

26 SECTION 14. Sections 162.308 and 264.108, Family Code, are
27 repealed.

1 SECTION 15. Sections 162.005 and 162.006, Family Code, as
2 amended by this Act, apply only to records regarding the history of
3 a child placed for adoption that are provided to a person on or
4 after the effective date of this Act. Records regarding the history
5 of a child placed for adoption that are provided to a person before
6 the effective date of this Act are governed by the law in effect on
7 the date the records were provided, and the former law is continued
8 in effect for that purpose.

9 SECTION 16. Section 261.002, Family Code, as amended by
10 this Act, applies only to a report of the exploitation of a child
11 made on or after the effective date of this Act. A report of the
12 exploitation of a child made before the effective date of this Act
13 is governed by the law in effect on the date the report was made, and
14 the former law is continued in effect for that purpose.

15 SECTION 17. Sections 262.101 and 262.107, Family Code, as
16 amended by this Act, apply only to a suit affecting the parent-child
17 relationship requesting an order to take possession of a child that
18 is filed on or after the effective date of this Act, or to a child
19 who is taken into possession by a governmental entity without a
20 court order on or after that date. A suit filed before the
21 effective date of this Act, or a child who is taken into possession
22 before that date, is governed by the law in effect on the date the
23 suit was filed or the child was taken into possession, and the
24 former law is continued in effect for that purpose.

25 SECTION 18. Section 262.112, Family Code, as amended by
26 this Act, and Section 263.405, Family Code, as added by Chapter
27 1090, Acts of the 77th Legislature, Regular Session, 2001, and

1 amended by this Act, apply only to the appeal of a trial court
2 ruling or order that becomes final on or after the effective date of
3 this Act. The appeal of a trial court ruling or order that became
4 final before the effective date of this Act is governed by the law
5 in effect on the date the ruling or order became final, and the
6 former law is continued in effect for that purpose.

7 SECTION 19. This Act takes effect September 1, 2003.