

By: Dutton

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 162.006, Family Code, is amended by amending Subsections (b) and (e) and adding Subsection (f) to read as follows:

(b) The department, bureau of vital statistics, licensed child-placing agency, or court retaining a copy of the report shall provide a copy of the report that has been edited as required by this section or Section 261.201 ~~[to protect the identity of the~~

1 ~~birth parents and any other person whose identity is confidential]~~  
2 to the following persons on request:

- 3           (1) an adoptive parent of the adopted child;  
4           (2) the managing conservator, guardian of the person,  
5 or legal custodian of the adopted child;  
6           (3) the adopted child, after the child is an adult;  
7           (4) the surviving spouse of the adopted child if the  
8 adopted child is dead and the spouse is the parent or guardian of a  
9 child of the deceased adopted child; or  
10           (5) a progeny of the adopted child if the adopted child  
11 is dead and the progeny is an adult.

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

27           (f) To the extent of any conflict between this section and

1 Section 261.201 with respect to the department's duty to edit  
2 documents, records, and other information, Section 261.201  
3 prevails.

4 SECTION 4. Section 261.002(a), Family Code, is amended to  
5 read as follows:

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

9 SECTION 5. Section 261.004, Family Code, is amended to read  
10 as follows:

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

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

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

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

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

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

27 (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~~];

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

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

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

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

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

(6) [(7)] of the children to whom Subdivision (5)

1   ~~[(6)]~~ applies, the number who were in the department's  
2 conservatorship ~~[foster care]~~ at the time of death;

3           (7) ~~[(8)]~~ the number of child protective services  
4 workers responsible for report intake, assessment, or  
5 investigation, categorized by department region;

6           (8) ~~[(9)]~~ the response time by the department with  
7 respect to initiating ~~[conducting]~~ an ~~[initial]~~ investigation of a  
8 report of child abuse or neglect;

9           (9) ~~[(10)]~~ ~~the response time by the department with~~  
10 ~~respect to commencing services to families and children for whom an~~  
11 ~~allegation of abuse or neglect has been made,~~

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

17           (10) ~~[(12)]~~ the number of children for whom the  
18 department has been appointed:

19                   (A) temporary managing conservator;

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

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

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

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

9           SECTION 6. Section 262.101, Family Code, is amended to read  
10 as follows:

11           Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF  
12 CHILD. An original suit filed by a governmental entity that  
13 requests permission to take possession of a child without prior  
14 notice and a hearing must be supported by an affidavit sworn to by a  
15 person with personal knowledge, including knowledge acquired from  
16 the department's investigation or other business records. The  
17 affidavit must state ~~[and stating]~~ facts sufficient to satisfy a  
18 person of ordinary prudence and caution that:

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

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

26           (3) reasonable efforts, consistent with the  
27 circumstances and providing for the safety of the child, were made

1 to prevent or eliminate the need for the removal of the child.

2 SECTION 7. Section 262.107(a), Family Code, is amended to  
3 read as follows:

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

9 (1) there is a continuing danger to the physical  
10 health or safety of the child if the child is returned to the  
11 parent, managing conservator, possessory conservator, guardian,  
12 caretaker, or custodian who is presently entitled to possession of  
13 the child or the evidence shows that the child has been the victim  
14 of sexual abuse on one or more occasions and that there is a  
15 substantial risk that the child will be the victim of sexual abuse  
16 in the future;

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

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

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

25 (b) In any proceeding in which an expedited hearing is held  
26 under Subsection (a), the department, parent, guardian, or other  
27 party to the proceeding is entitled to an expedited appeal on a

1 ruling by a court that the child may not be removed from the child's  
 2 home or, if the department has already removed the child, a ruling  
 3 by a court that the department must return the child to the child's  
 4 home.

5 (c) If a child is returned to the child's home after a  
 6 removal in which the department was entitled to an expedited  
 7 hearing under this section and the child is the subject of a  
 8 subsequent allegation of abuse or neglect, the department or any  
 9 other interested party is entitled to an expedited hearing on the  
 10 removal of the child from the child's home in the manner provided by  
 11 Subsection (a) and to an expedited appeal as ~~[in the manner]~~  
 12 provided by Subsections ~~[Subsection]~~ (b), (d), and (e).

13 (d) Not later than the first day after the date a trial court  
 14 makes a ruling from which a party is entitled to an expedited appeal  
 15 under Subsection (b), the party must file a notice of expedited  
 16 appeal with the trial court and the appellate court. A docket entry  
 17 reflecting the trial court's ruling is a final, appealable order  
 18 for purposes of this section, and the trial court's failure to  
 19 render a signed, written order does not affect a party's right to  
 20 appeal. Not later than the third day after the date notice of  
 21 expedited appeal is filed, the trial record must be filed in the  
 22 appellate court. Not later than the second day after the date the  
 23 trial record is filed, the appellant must file a brief with the  
 24 appellate court. The appellee may file a response brief. Failure  
 25 of the appellant or appellee to file a brief may not affect or delay  
 26 the hearing on the appeal. The appellate court may not grant an  
 27 extension to any party.

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

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

6            (2) the seventh day after the date the appellant filed  
7 the notice of appeal, if the appellant did not file an appellate  
8 brief.

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

12        SECTION 9. Section 263.405, Family Code, as added by  
13 Chapter 1090, Acts of the 77th Legislature, Regular Session, 2001,  
14 is amended to read as follows:

15        Sec. 263.405. APPEAL OF FINAL ORDER. (a) An appeal of a  
16 final order rendered under this subchapter is governed by the rules  
17 of the supreme court for accelerated appeals in civil cases and the  
18 procedures provided by this section. The appeal shall be set for  
19 submission on the first submission date on or after the 31st day  
20 after the date the last brief on the appeal is filed. The appellate  
21 court shall render its final order or judgment with the least  
22 possible delay.

23        (b) Not later than the 15th day after the date a final order  
24 is signed by the trial judge, a party intending to appeal the order  
25 must file with the trial court a statement of the point or points on  
26 which the party intends to appeal. The statement must ~~may~~ be  
27 combined with a motion for a new trial or a motion to modify,

1 correct, or reform the judgment, if any. A motion for a new trial or  
2 motion to modify, correct, or reform the judgment is considered to  
3 be overruled if the court in which the motion is made does not  
4 render a signed order on the motion before the 36th day after the  
5 date the trial judge signed the final order.

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

12 ~~[(d) The trial court shall hold a hearing not later than the~~  
13 ~~30th day after the date the final order is signed to determine~~  
14 ~~whether:~~

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

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

18 ~~[(3) the appeal is frivolous as provided by Section~~  
19 ~~13.003(b), Civil Practice and Remedies Code.]~~

20 (e) If a party claims indigency and requests the appointment  
21 of an attorney, the party must file an affidavit of indigence in  
22 accordance with Rule 20.1, Texas Rules of Appellate Procedure,  
23 which governs an appeal of a ruling on the claim of indigency,  
24 except that the trial court may not extend the time to conduct a  
25 hearing on a contest to the claim of indigency ~~[the court shall~~  
26 ~~require the person to file an affidavit of indigency and shall hear~~  
27 ~~evidence to determine the issue of indigency. If the court does not~~

~~render a written order denying the claim of indigence or requiring the person to pay partial costs before the 36th day after the date the final order being appealed is signed, the court shall consider the person to be indigent and shall appoint counsel to represent the person].~~

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

(g) The appellant may appeal the court's order denying the appellant's claim of indigence ~~[or the court's finding that the appeal is frivolous]~~ 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 ~~[the reporter's record and clerk's record of the hearing held under this section, both of which shall be provided without advance payment,~~] not later than the 10th day after the date the trial court rendered the order ~~[makes the decision]~~. 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. The appellate court shall review the records and may require the parties to file appellate briefs on the issues presented, but may not hear oral argument on the issues. The appellate court shall

1 render appropriate orders after reviewing the records and appellate  
2 briefs, if any.

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

5 SECTION 10. Section 264.101(d), Family Code, is amended to  
6 read as follows:

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

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

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

15 SECTION 11. Sections 162.308 and 264.108, Family Code, are  
16 repealed.

17 SECTION 12. Section 162.006, Family Code, as amended by  
18 this Act, applies only to records regarding the history of a child  
19 placed for adoption that are provided to a person on or after the  
20 effective date of this Act. Records regarding the history of a  
21 child placed for adoption that are provided to a person before the  
22 effective date of this Act are governed by the law in effect on the  
23 date the records were provided, and the former law is continued in  
24 effect for that purpose.

25 SECTION 13. Section 261.002, Family Code, as amended by  
26 this Act, applies only to a report of the exploitation of a child  
27 made on or after the effective date of this Act. A report of the

1 exploitation of a child made before the effective date of this Act  
2 is governed by the law in effect on the date the report was made, and  
3 the former law is continued in effect for that purpose.

4 SECTION 14. Sections 262.101 and 262.107, Family Code, as  
5 amended by this Act, apply only to a suit affecting the parent-child  
6 relationship requesting an order to take possession of a child that  
7 is filed on or after the effective date of this Act, or to a child  
8 who is taken into possession by a governmental entity without a  
9 court order on or after that date. A suit filed before the  
10 effective date of this Act, or a child who is taken into possession  
11 before that date, is governed by the law in effect on the date the  
12 suit was filed or the child was taken into possession, and the  
13 former law is continued in effect for that purpose.

14 SECTION 15. Section 262.112, Family Code, as amended by  
15 this Act, and Section 263.405, Family Code, as added by Chapter  
16 1090, Acts of the 77th Legislature, Regular Session, 2001, and  
17 amended by this Act, apply only to the appeal of a trial court  
18 ruling or order that becomes final on or after the effective date of  
19 this Act. The appeal of a trial court ruling or order that became  
20 final before the effective date of this Act is governed by the law  
21 in effect on the date the ruling or order became final, and the  
22 former law is continued in effect for that purpose.

23 SECTION 16. This Act takes effect September 1, 2003.