

By: Farrar

H.B. No. 1908

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to reasonable efforts to return a child to the child's home  
3 in certain suits affecting the parent-child relationship.

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

5 SECTION 1. Section 161.001, Family Code, is amended to read  
6 as follows:

7 Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD  
8 RELATIONSHIP. The court may order termination of the parent-child  
9 relationship if the court finds by clear and convincing evidence:

10 (1) that the parent has:

11 (A) voluntarily left the child alone or in the  
12 possession of another not the parent and expressed an intent not to  
13 return;

14 (B) voluntarily left the child alone or in the  
15 possession of another not the parent without expressing an intent  
16 to return, without providing for the adequate support of the child,  
17 and remained away for a period of at least three months;

18 (C) voluntarily left the child alone or in the  
19 possession of another without providing adequate support of the  
20 child and remained away for a period of at least six months;

21 (D) knowingly placed or knowingly allowed the  
22 child to remain in conditions or surroundings which endanger the  
23 physical or emotional well-being of the child;

24 (E) engaged in conduct or knowingly placed the

1 child with persons who engaged in conduct which endangers the  
2 physical or emotional well-being of the child;

3 (F) failed to support the child in accordance  
4 with the parent's ability during a period of one year ending within  
5 six months of the date of the filing of the petition;

6 (G) abandoned the child without identifying the  
7 child or furnishing means of identification, and the child's  
8 identity cannot be ascertained by the exercise of reasonable  
9 diligence;

10 (H) voluntarily, and with knowledge of the  
11 pregnancy, abandoned the mother of the child beginning at a time  
12 during her pregnancy with the child and continuing through the  
13 birth, failed to provide adequate support or medical care for the  
14 mother during the period of abandonment before the birth of the  
15 child, and remained apart from the child or failed to support the  
16 child since the birth;

17 (I) contumaciously refused to submit to a  
18 reasonable and lawful order of a court under Subchapter D, Chapter  
19 261;

20 (J) been the major cause of:

21 (i) the failure of the child to be enrolled  
22 in school as required by the Education Code; or

23 (ii) the child's absence from the child's  
24 home without the consent of the parents or guardian for a  
25 substantial length of time or without the intent to return;

26 (K) executed before or after the suit is filed an  
27 unrevoked or irrevocable affidavit of relinquishment of parental

1 rights as provided by this chapter;

2 (L) been convicted or has been placed on  
3 community supervision, including deferred adjudication community  
4 supervision, for being criminally responsible for the death or  
5 serious injury of a child under the following sections of the Penal  
6 Code or adjudicated under Title 3 for conduct that caused the death  
7 or serious injury of a child and that would constitute a violation  
8 of one of the following Penal Code sections:

9 (i) Section 19.02 (murder);

10 (ii) Section 19.03 (capital murder);

11 (iii) Section 19.04 (manslaughter);

12 (iv) Section 21.11 (indecent with a  
13 child);

14 (v) Section 22.01 (assault);

15 (vi) Section 22.011 (sexual assault);

16 (vii) Section 22.02 (aggravated assault);

17 (viii) Section 22.021 (aggravated sexual  
18 assault);

19 (ix) Section 22.04 (injury to a child,  
20 elderly individual, or disabled individual);

21 (x) Section 22.041 (abandoning or  
22 endangering child);

23 (xi) Section 25.02 (prohibited sexual  
24 conduct);

25 (xii) Section 43.25 (sexual performance by a  
26 child); and

27 (xiii) Section 43.26 (possession or

1 promotion of child pornography);

2 (M) had his or her parent-child relationship  
3 terminated with respect to another child based on a finding that the  
4 parent's conduct was in violation of Paragraph (D) or (E) or  
5 substantially equivalent provisions of the law of another state;

6 (N) constructively abandoned the child who has  
7 been in the permanent or temporary managing conservatorship of the  
8 Department of Protective and Regulatory Services or an authorized  
9 agency for not less than six months, and:

10 (i) ~~[the department or authorized agency~~  
11 ~~has made reasonable efforts to return the child to the parent,~~

12 ~~[(ii)]~~ the parent has not regularly visited  
13 or maintained significant contact with the child; and

14 (ii) ~~[(iii)]~~ the parent has demonstrated an  
15 inability to provide the child with a safe environment;

16 (O) failed to comply with the provisions of a  
17 court order that specifically established the actions necessary for  
18 the parent to obtain the return of the child who has been in the  
19 permanent or temporary managing conservatorship of the Department  
20 of Protective and Regulatory Services for not less than nine months  
21 as a result of the child's removal from the parent under Chapter 262  
22 for the abuse or neglect of the child;

23 (P) used a controlled substance, as defined by  
24 Chapter 481, Health and Safety Code, in a manner that endangered the  
25 health or safety of the child, and:

26 (i) failed to complete a court-ordered  
27 substance abuse treatment program; or

1 (ii) after completion of a court-ordered  
2 substance abuse treatment program, continued to abuse a controlled  
3 substance;

4 (Q) knowingly engaged in criminal conduct that  
5 has resulted in the parent's:

6 (i) conviction of an offense; and

7 (ii) confinement or imprisonment and  
8 inability to care for the child for not less than two years from the  
9 date of filing the petition;

10 (R) been the cause of the child being born  
11 addicted to alcohol or a controlled substance, other than a  
12 controlled substance legally obtained by prescription, as defined  
13 by Section 261.001; or

14 (S) voluntarily delivered the child to a  
15 designated emergency infant care provider under Section 262.302  
16 without expressing an intent to return for the child; and

17 (2) that termination is in the best interest of the  
18 child.

19 SECTION 2. Section 161.003(a), Family Code, is amended to  
20 read as follows:

21 (a) The court may order termination of the parent-child  
22 relationship in a suit filed by the Department of Protective and  
23 Regulatory Services if the court finds that:

24 (1) the parent has a mental or emotional illness or a  
25 mental deficiency that renders the parent unable to provide for the  
26 physical, emotional, and mental needs of the child;

27 (2) the illness or deficiency, in all reasonable

1 probability, proved by clear and convincing evidence, will continue  
2 to render the parent unable to provide for the child's needs until  
3 the 18th birthday of the child;

4 (3) the department has been the temporary or sole  
5 managing conservator of the child of the parent for at least six  
6 months preceding the date of the hearing on the termination held in  
7 accordance with Subsection (c); and

8 ~~(4) [the department has made reasonable efforts to~~  
9 ~~return the child to the parent; and~~

10 ~~[(5)]~~ the termination is in the best interest of the  
11 child.

12 SECTION 3. Section 262.101, Family Code, is amended to read  
13 as follows:

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

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

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

27 ~~[(3) reasonable efforts, consistent with the~~

1 ~~circumstances and providing for the safety of the child, were made~~  
2 ~~to prevent or eliminate the need for the removal of the child].~~

3 SECTION 4. Section 262.102(a), Family Code, is amended to  
4 read as follows:

5 (a) Before a court may, without prior notice and a hearing,  
6 issue a temporary restraining order or attachment of a child in a  
7 suit brought by a governmental entity, the court must find that:

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

12 (2) there is no time, consistent with the physical  
13 health or safety of the child and the nature of the emergency, for a  
14 full adversary hearing under Subchapter C[~~, and~~

15 ~~[(3) reasonable efforts, consistent with the~~  
16 ~~circumstances and providing for the safety of the child, were made~~  
17 ~~to prevent or eliminate the need for removal of the child].~~

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

20 (a) The court shall order the return of the child at the  
21 initial hearing regarding a child taken in possession without a  
22 court order by a governmental entity unless the court is satisfied  
23 that:

24 (1) there is a continuing danger to the physical  
25 health or safety of the child if the child is returned to the  
26 parent, managing conservator, possessory conservator, guardian,  
27 caretaker, or custodian who is presently entitled to possession of

1 the child or the evidence shows that the child has been the victim  
2 of sexual abuse on one or more occasions and that there is a  
3 substantial risk that the child will be the victim of sexual abuse  
4 in the future; and

5 (2) continuation of the child in the home would be  
6 contrary to the child's welfare[~~+~~ and

7 [~~(3) reasonable efforts, consistent with the  
8 circumstances and providing for the safety of the child, were made  
9 to prevent or eliminate the need for removal of the child~~].

10 SECTION 6. Section 262.113, Family Code, is amended to read  
11 as follows:

12 Sec. 262.113. FILING SUIT WITHOUT TAKING POSSESSION OF  
13 CHILD. An original suit filed by a governmental entity that  
14 requests to take possession of a child after notice and a hearing  
15 must be supported by an affidavit sworn to by a person with personal  
16 knowledge and stating facts sufficient to satisfy a person of  
17 ordinary prudence and caution that[~~+~~

18 [~~(1) reasonable efforts have been made to prevent or  
19 eliminate the need to remove the child from the child's home; and~~

20 [~~(2)~~] allowing the child to remain in the home would be  
21 contrary to the child's welfare.

22 SECTION 7. Section 262.201(b), Family Code, is amended to  
23 read as follows:

24 (b) At the conclusion of the full adversary hearing, the  
25 court shall order the return of the child to the parent, managing  
26 conservator, possessory conservator, guardian, caretaker, or  
27 custodian entitled to possession unless the court finds sufficient



1 evidence to satisfy a person of ordinary prudence and caution that:

2 (1) there was a danger to the physical health or safety  
3 of the child which was caused by an act or failure to act of the  
4 person entitled to possession and for the child to remain in the  
5 home is contrary to the welfare of the child; and

6 (2) the urgent need for protection required the  
7 immediate removal of the child [~~and reasonable efforts, consistent~~  
8 ~~with the circumstances and providing for the safety of the child,~~  
9 ~~were made to eliminate or prevent the child's removal; and~~

10 [~~(3) reasonable efforts have been made to enable the~~  
11 ~~child to return home, but there is a substantial risk of a~~  
12 ~~continuing danger if the child is returned home].~~

13 SECTION 8. Sections 262.2015(a) and (c), Family Code, are  
14 amended to read as follows:

15 (a) The court may waive the requirement of a service plan  
16 [~~and the requirement to make reasonable efforts to return the child~~  
17 ~~to a parent]~~ and may accelerate the trial schedule to result in a  
18 final order for a child under the care of the department at an  
19 earlier date than provided by Subchapter D, Chapter 263, if the  
20 court finds that the parent has subjected the child to aggravated  
21 circumstances.

22 (c) On finding that a service plan is [~~reasonable efforts to~~  
23 ~~make it possible for the child to safely return to the child's home~~  
24 ~~are]~~ not required, the court shall at any time before the 30th day  
25 after the date of the finding, conduct an initial permanency  
26 hearing under Subchapter D, Chapter 263. Separate notice of the  
27 permanency plan is not required but may be given with a notice of a

1 hearing under this section.

2 SECTION 9. Section 262.205(b), Family Code, is amended to  
3 read as follows:

4 (b) After the hearing, the court may grant the request to  
5 remove the child from the parent, managing conservator, possessory  
6 conservator, guardian, caretaker, or custodian entitled to  
7 possession of the child if the court finds sufficient evidence to  
8 satisfy a person of ordinary prudence and caution that[+]

9 ~~[(1) reasonable efforts have been made to prevent or~~  
10 ~~eliminate the need to remove the child from the child's home; and~~

11 ~~[(2)]~~ allowing the child to remain in the home would be  
12 contrary to the child's welfare.

13 SECTION 10. Section 262.001(b), Family Code, is repealed.

14 SECTION 11. The changes in law made by this Act apply to a  
15 suit affecting the parent-child relationship that is pending in a  
16 trial court on or filed on or after the effective date of this Act.

17 SECTION 12. This Act takes effect September 1, 2003.