

By: Nelson

S.B. No. 1424

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain suits affecting the parent-child relationship
3 of, certain records regarding, and foster care payments for certain
4 children.

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

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

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

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

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

18 SECTION 3. Section 162.006, Family Code, is amended by
19 amending Subsections (b) and (e) and adding Subsection (f) to read
20 as follows:

21 (b) The department, bureau of vital statistics, licensed
22 child-placing agency, or court retaining a copy of the report shall
23 provide a copy of the report that has been edited as required by
24 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. Subsection (a), Section 261.002, Family Code, is
5 amended to 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]~~

1 Subdivision (2) applies:

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

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

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

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

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

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

21 (4) [(5)] the number of families in which, after an
22 investigation of a report alleging abuse or neglect of a child, the
23 child was not removed, but the child or family received services
24 from the department;

25 (5) [(6)] the number of children who died during the
26 preceding year as a result of child abuse or neglect;

27 (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
13 their families or who received family preservation services and
14 who, before the fifth anniversary of the date of return or receipt,
15 were the victims of substantiated reports of child abuse or
16 neglect, including abuse or neglect resulting in the death of the
17 child; and

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

20 (A) temporary managing conservator;

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

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

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

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

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

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

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

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

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

4 SECTION 7. Subsection (a), Section 262.107, Family Code, is
5 amended to read as follows:

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

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

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

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

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

27 (b) In any proceeding in which an expedited hearing is held

1 under Subsection (a), the department, parent, guardian, or other
2 party to the proceeding is entitled to an expedited appeal on a
3 ruling by a court that the child may not be removed from the child's
4 home or, if the department has already removed the child, a ruling
5 by a court that the department must return the child to the child's
6 home.

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

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

1 the hearing on the appeal. The appellate court may not grant an
2 extension to any party.

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

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

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

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

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

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

25 (b) Not later than the 15th day after the date a final order
26 is signed by the trial judge, a party intending to appeal the order
27 must file with the trial court a statement of the point or points on

1 which the party intends to appeal. The statement must [~~may~~] be
2 combined with a motion for a new trial or a motion to modify,
3 correct, or reform the judgment, if any. A motion for a new trial or
4 motion to modify, correct, or reform the judgment is considered to
5 be overruled if the court in which the motion is made does not
6 render a signed order on the motion before the 36th day after the
7 date the trial judge signed the final order.

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

14 [~~(d) The trial court shall hold a hearing not later than the~~
15 ~~30th day after the date the final order is signed to determine~~
16 ~~whether:~~

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

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

20 [~~(3) the appeal is frivolous as provided by Section~~
21 ~~13.003(b), Civil Practice and Remedies Code.]~~

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

1 ~~require the person to file an affidavit of indigency and shall hear~~
2 ~~evidence to determine the issue of indigency. If the court does not~~
3 ~~render a written order denying the claim of indigence or requiring~~
4 ~~the person to pay partial costs before the 36th day after the date~~
5 ~~the final order being appealed is signed, the court shall consider~~
6 ~~the person to be indigent and shall appoint counsel to represent the~~
7 ~~person].~~

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

14 (g) The appellant may appeal the court's order denying the
15 appellant's claim of indigence [~~or the court's finding that the~~
16 ~~appeal is frivolous]~~ by filing a written request for the reporter's
17 record and the clerk's record, both of which shall be provided
18 without advance payment, not later than the third day after the date
19 the trial court rendered the order and by filing both records with
20 the appellate court [~~the reporter's record and clerk's record of the~~
21 ~~hearing held under this section, both of which shall be provided~~
22 ~~without advance payment,~~] not later than the 10th day after the date
23 the trial court rendered the order [~~makes the decision~~]. The
24 clerk's record may include only those items pertaining to the issue
25 of indigency, and the reporter's record may include only a record of
26 the hearings conducted by the trial court on the issue of indigency.
27 The appellate court shall review the records and may require the

1 parties to file appellate briefs on the issues presented, but may
2 not hear oral argument on the issues. The appellate court shall
3 render appropriate orders after reviewing the records and appellate
4 briefs, if any.

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

7 SECTION 10. Subsection (d), Section 264.101, Family Code,
8 is amended to read as follows:

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

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

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

17 SECTION 11. 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 12. 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 13. 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 14. 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 15. This Act takes effect September 1, 2003.