

1-1 By: Nelson S.B. No. 1424
1-2 (In the Senate - Filed March 13, 2003; March 20, 2003, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 24, 2003, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; April 24, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to certain suits affecting the parent-child relationship
1-9 of, certain records regarding, and foster care payments for certain
1-10 children.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 155.201, Family Code, is amended by
1-13 adding Subsection (d) to read as follows:

1-14 (d) Section 262.203 applies to the transfer of a suit filed
1-15 by the Department of Protective and Regulatory Services under
1-16 Chapter 262.

1-17 SECTION 2. Subsection (a), Section 155.202, Family Code, is
1-18 amended to read as follows:

1-19 (a) If the basis of a motion to transfer a proceeding under
1-20 this subchapter or Section 262.203 is that the child resides in
1-21 another county, the court may deny the motion if it is shown that
1-22 the child has resided in that county for less than six months at the
1-23 time the proceeding is commenced.

1-24 SECTION 3. Section 162.006, Family Code, is amended by
1-25 amending Subsections (b) and (e) and adding Subsection (f) to read
1-26 as follows:

1-27 (b) The department, bureau of vital statistics, licensed
1-28 child-placing agency, or court retaining a copy of the report shall
1-29 provide a copy of the report that has been edited as required by
1-30 this section or Section 261.201 ~~[to protect the identity of the~~
1-31 ~~birth parents and any other person whose identity is confidential]~~
1-32 to the following persons on request:

- 1-33 (1) an adoptive parent of the adopted child;
1-34 (2) the managing conservator, guardian of the person,
1-35 or legal custodian of the adopted child;
1-36 (3) the adopted child, after the child is an adult;
1-37 (4) the surviving spouse of the adopted child if the
1-38 adopted child is dead and the spouse is the parent or guardian of a
1-39 child of the deceased adopted child; or
1-40 (5) a progeny of the adopted child if the adopted child
1-41 is dead and the progeny is an adult.

1-42 (e) The report shall be retained for 99 years from the date
1-43 of the adoption by the department or licensed child-placing agency
1-44 placing the child for adoption. If the agency ceases to function as
1-45 a child-placing agency, the agency shall transfer all the reports
1-46 to the bureau of vital statistics ~~[department]~~ or, after giving
1-47 notice to the bureau of vital statistics ~~[department]~~, to a
1-48 transferee agency that is assuming responsibility for the
1-49 preservation of the agency's adoption records. If the child has not
1-50 been placed for adoption by the department or a licensed
1-51 child-placing agency and if the child is being adopted by a person
1-52 other than the child's stepparent, grandparent, aunt, or uncle by
1-53 birth, marriage, or prior adoption, the person or entity who places
1-54 the child for adoption shall file the report with the bureau of
1-55 vital statistics ~~[department]~~, which shall retain the copies for 99
1-56 years from the date of the adoption.

1-57 (f) To the extent of any conflict between this section and
1-58 Section 261.201 with respect to the department's duty to edit
1-59 documents, records, and other information, Section 261.201
1-60 prevails.

1-61 SECTION 4. Subsection (a), Section 261.002, Family Code, is
1-62 amended to read as follows:

1-63 (a) The department shall establish and maintain in Austin a
1-64 central registry of reported cases of child abuse, ~~[or]~~ neglect, or

2-1 exploitation.

2-2 SECTION 5. Section 261.004, Family Code, is amended to read
2-3 as follows:

2-4 Sec. 261.004. STATISTICS OF ABUSE AND NEGLECT OF CHILDREN.

2-5 (a) The department shall prepare and disseminate statistics by
2-6 county relating to the department's activities under this subtitle
2-7 and include the information specified in Subsection (b) in an
2-8 annual report covering the preceding fiscal year. The report must
2-9 be made available to the public.

2-10 (b) The department shall report the following information,
2-11 to the extent the information is available from the department's
2-12 records:

2-13 (1) the number of initial phone calls received by the
2-14 department alleging abuse or ~~and~~ neglect of a child;

2-15 (2) ~~[the number of children reported to the department~~
2-16 ~~as having been abused and neglected;~~

2-17 ~~[(3)]~~ the number of reports received by the department
2-18 alleging abuse or neglect of a child and assigned by the department
2-19 for investigation;

2-20 (3) ~~[(4)]~~ of the reports ~~[children]~~ to which ~~[whom]~~
2-21 Subdivision (2) applies:

2-22 (A) the number of cases in which the department
2-23 found reason to believe that abuse or neglect occurred ~~[for whom the~~
2-24 ~~report was substantiated];~~

2-25 (B) the number of cases in which the department
2-26 was unable to determine whether abuse or neglect occurred ~~[for whom~~
2-27 ~~the report was unsubstantiated];~~

2-28 (C) the number of cases in which the department
2-29 determined the allegations were unfounded ~~[for whom the report was~~
2-30 ~~determined to be false];~~

2-31 (D) the number of children who were the subjects
2-32 of the reports and who did not receive services, other than
2-33 investigative services, from the department under a state or
2-34 federal program;

2-35 (E) the number of children who were the subjects
2-36 of the reports and who received services ~~[, including preventative~~
2-37 ~~services,]~~ from the department under a state or federal program;
2-38 and

2-39 (F) the number of children who were removed from
2-40 their homes ~~[the child's home]~~ during the preceding fiscal year;

2-41 (4) ~~[(5)]~~ the number of families in which, after an
2-42 investigation of a report alleging abuse or neglect of a child, the
2-43 child was not removed, but the child or family received services
2-44 from the department;

2-45 (5) ~~[(6)]~~ the number of children who died during the
2-46 preceding year as a result of child abuse or neglect;

2-47 (6) ~~[(7)]~~ of the children to whom Subdivision (5)
2-48 ~~[(6)]~~ applies, the number who were in the department's
2-49 conservatorship ~~[foster care]~~ at the time of death;

2-50 (7) ~~[(8)]~~ the number of child protective services
2-51 workers responsible for report intake, assessment, or
2-52 investigation, categorized by department region;

2-53 (8) ~~[(9)]~~ the response time by the department with
2-54 respect to initiating ~~[conducting]~~ an ~~[initial]~~ investigation of a
2-55 report of child abuse or neglect;

2-56 (9) ~~[(10)]~~ the response time by the department with
2-57 respect to commencing services to families and children for whom an
2-58 allegation of abuse or neglect has been made;

2-59 ~~[(11)]~~ the number of children who were returned to
2-60 their families or who received family preservation services and
2-61 who, before the fifth anniversary of the date of return or receipt,
2-62 were the victims of substantiated reports of child abuse or
2-63 neglect, including abuse or neglect resulting in the death of the
2-64 child; and

2-65 (10) ~~[(12)]~~ the number of children for whom the
2-66 department has been appointed:

2-67 (A) temporary managing conservator;

2-68 (B) permanent managing conservator, and the
2-69 parent-child relationship of each of the child's parents with

3-1 respect to the child has not been terminated; and

3-2 (C) permanent managing conservator, and the
 3-3 parent-child relationship of each of the child's parents with
 3-4 respect to the child has been terminated [cases pursued by the
 3-5 department in each stage of the judicial process, including civil
 3-6 and criminal proceedings and the results of each proceeding; and

3-7 [~~(13) the number of children for whom a person was~~
 3-8 ~~appointed by the court to represent the best interests of the child~~
 3-9 ~~and the average number of out-of-court contacts between the person~~
 3-10 ~~and the child].~~

3-11 (c) The department shall compile the information specified
 3-12 in Subsection (b) for the preceding fiscal year in a report to be
 3-13 submitted to the legislature and the general public not later than
 3-14 March [February] 1 of each year.

3-15 SECTION 6. Section 262.101, Family Code, is amended to read
 3-16 as follows:

3-17 Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF
 3-18 CHILD. An original suit filed by a governmental entity that
 3-19 requests permission to take possession of a child without prior
 3-20 notice and a hearing must be supported by an affidavit sworn to by a
 3-21 person with personal knowledge, including knowledge acquired from
 3-22 the Department of Protective and Regulatory Services'
 3-23 investigation or other business records. The affidavit must state
 3-24 [and stating] facts sufficient to satisfy a person of ordinary
 3-25 prudence and caution that:

3-26 (1) there is an immediate danger to the physical
 3-27 health or safety of the child or the child has been a victim of
 3-28 neglect or sexual abuse and that continuation in the home would be
 3-29 contrary to the child's welfare;

3-30 (2) there is no time, consistent with the physical
 3-31 health or safety of the child, for a full adversary hearing under
 3-32 Subchapter C; and

3-33 (3) reasonable efforts, consistent with the
 3-34 circumstances and providing for the safety of the child, were made
 3-35 to prevent or eliminate the need for the removal of the child.

3-36 SECTION 7. Subsection (a), Section 262.107, Family Code, is
 3-37 amended to read as follows:

3-38 (a) The court shall order the return of the child at the
 3-39 initial hearing regarding a child taken in possession without a
 3-40 court order by a governmental entity unless the court finds
 3-41 sufficient evidence to satisfy a person of ordinary prudence and
 3-42 caution [is satisfied] that:

3-43 (1) there is a continuing danger to the physical
 3-44 health or safety of the child if the child is returned to the
 3-45 parent, managing conservator, possessory conservator, guardian,
 3-46 caretaker, or custodian who is presently entitled to possession of
 3-47 the child or the evidence shows that the child has been the victim
 3-48 of sexual abuse on one or more occasions and that there is a
 3-49 substantial risk that the child will be the victim of sexual abuse
 3-50 in the future;

3-51 (2) continuation of the child in the home would be
 3-52 contrary to the child's welfare; and

3-53 (3) reasonable efforts, consistent with the
 3-54 circumstances and providing for the safety of the child, were made
 3-55 to prevent or eliminate the need for removal of the child.

3-56 SECTION 8. Section 262.112, Family Code, is amended by
 3-57 amending Subsections (b) and (c) and adding Subsections (d), (e),
 3-58 and (f) to read as follows:

3-59 (b) In any proceeding in which an expedited hearing is held
 3-60 under Subsection (a), the department, parent, guardian, or other
 3-61 party to the proceeding is entitled to an expedited appeal on a
 3-62 ruling by a court that the child may not be removed from the child's
 3-63 home or, if the department has already removed the child, a ruling
 3-64 by a court that the department must return the child to the child's
 3-65 home.

3-66 (c) If a child is returned to the child's home after a
 3-67 removal in which the department was entitled to an expedited
 3-68 hearing under this section and the child is the subject of a
 3-69 subsequent allegation of abuse or neglect, the department or any

4-1 other interested party is entitled to an expedited hearing on the
 4-2 removal of the child from the child's home in the manner provided by
 4-3 Subsection (a) and to an expedited appeal as [in the manner]
 4-4 provided by Subsections [Subsection] (b), (d), and (e).

4-5 (d) Not later than the first day after the date a trial court
 4-6 makes a ruling from which a party is entitled to an expedited appeal
 4-7 under Subsection (b), the party must file a notice of expedited
 4-8 appeal with the trial court and the appellate court. A docket entry
 4-9 reflecting the trial court's ruling is a final, appealable order
 4-10 for purposes of this section, and the trial court's failure to
 4-11 render a signed, written order does not affect a party's right to
 4-12 appeal. Not later than the third day after the date notice of
 4-13 expedited appeal is filed, the trial record must be filed in the
 4-14 appellate court. Not later than the second day after the date the
 4-15 trial record is filed, the appellant must file a brief with the
 4-16 appellate court. The appellee may file a response brief. Failure
 4-17 of the appellant or appellee to file a brief may not affect or delay
 4-18 the hearing on the appeal. The appellate court may not grant an
 4-19 extension to any party.

4-20 (e) The appellate court, regardless of whether a request for
 4-21 oral argument is granted, shall render a final order or judgment on
 4-22 an appeal under Subsection (d) not later than the earlier of:

4-23 (1) the second day after the date the appellant filed
 4-24 the appellate brief with the appellate court; or

4-25 (2) the seventh day after the date the appellant filed
 4-26 the notice of appeal, if the appellant did not file an appellate
 4-27 brief.

4-28 (f) In this section, "expedited hearing" includes any
 4-29 emergency or initial hearing held before a full adversary hearing
 4-30 under Section 262.201 or a hearing under Section 262.205.

4-31 SECTION 9. Section 263.405, Family Code, as added by
 4-32 Chapter 1090, Acts of the 77th Legislature, Regular Session, 2001,
 4-33 is amended to read as follows:

4-34 Sec. 263.405. APPEAL OF FINAL ORDER. (a) An appeal of a
 4-35 final order rendered under this subchapter is governed by the rules
 4-36 of the supreme court for accelerated appeals in civil cases and the
 4-37 procedures provided by this section. The appeal shall be set for
 4-38 submission on the first submission date on or after the 31st day
 4-39 after the date the last brief on the appeal is filed. The appellate
 4-40 court shall render its final order or judgment with the least
 4-41 possible delay.

4-42 (b) Not later than the 15th day after the date a final order
 4-43 is signed by the trial judge, a party intending to appeal the order
 4-44 must file with the trial court a statement of the point or points on
 4-45 which the party intends to appeal. The statement must [~~may~~]
 4-46 be combined with a motion for a new trial or a motion to modify,
 4-47 correct, or reform the judgment, if any. A motion for a new trial or
 4-48 motion to modify, correct, or reform the judgment is considered to
 4-49 be overruled if the court in which the motion is made does not
 4-50 render a signed order on the motion before the 36th day after the
 4-51 date the trial judge signed the final order.

4-52 (c) A motion for a new trial, a request for findings of fact
 4-53 and conclusions of law, or any other post-trial motion in the trial
 4-54 court does not extend the deadline for filing a notice of appeal
 4-55 under Rule 26.1(b), Texas Rules of Appellate Procedure, or the
 4-56 deadline for filing an affidavit of indigence in accordance with
 4-57 [~~under~~] Rule 20, Texas Rules of Appellate Procedure.

4-58 [~~(d) The trial court shall hold a hearing not later than the~~
 4-59 ~~30th day after the date the final order is signed to determine~~
 4-60 ~~whether:~~

4-61 [~~(1) a new trial should be granted,~~

4-62 [~~(2) a party's claim of indigence, if any, should be~~
 4-63 ~~sustained, and~~

4-64 [~~(3) the appeal is frivolous as provided by Section~~
 4-65 ~~13.003(b), Civil Practice and Remedies Code.]~~

4-66 (e) If a party claims indigency and requests the appointment
 4-67 of an attorney, the party must file an affidavit of indigence in
 4-68 accordance with Rule 20.1, Texas Rules of Appellate Procedure,
 4-69 which governs an appeal of a ruling on the claim of indigency,

5-1 ~~except that the trial court may not extend the time to conduct a~~
 5-2 ~~hearing on a contest to the claim of indigency [the court shall~~
 5-3 ~~require the person to file an affidavit of indigency and shall hear~~
 5-4 ~~evidence to determine the issue of indigency. If the court does not~~
 5-5 ~~render a written order denying the claim of indigence or requiring~~
 5-6 ~~the person to pay partial costs before the 36th day after the date~~
 5-7 ~~the final order being appealed is signed, the court shall consider~~
 5-8 ~~the person to be indigent and shall appoint counsel to represent the~~
 5-9 ~~person].~~

5-10 (f) The appellate record must be filed in the appellate
 5-11 court not later than the 60th day after the date the final order is
 5-12 signed by the trial judge, unless the trial court[~~, after a~~
 5-13 ~~hearing,~~] grants a new trial or sustains a contest to a ruling on a
 5-14 claim of indigency [~~denies a request for a trial court record at no~~
 5-15 ~~cost~~].

5-16 (g) The appellant may appeal the court's order denying the
 5-17 appellant's claim of indigence [~~or the court's finding that the~~
 5-18 ~~appeal is frivolous~~] by filing a written request for the reporter's
 5-19 record and the clerk's record, both of which shall be provided
 5-20 without advance payment, not later than the third day after the date
 5-21 the trial court rendered the order and by filing both records with
 5-22 the appellate court [~~the reporter's record and clerk's record of the~~
 5-23 ~~hearing held under this section, both of which shall be provided~~
 5-24 ~~without advance payment,~~] not later than the 10th day after the date
 5-25 the trial court rendered the order [~~makes the decision~~]. The
 5-26 clerk's record may include only those items pertaining to the issue
 5-27 of indigency, and the reporter's record may include only a record of
 5-28 the hearings conducted by the trial court on the issue of indigency.
 5-29 The appellate court shall review the records and may require the
 5-30 parties to file appellate briefs on the issues presented, but may
 5-31 not hear oral argument on the issues. The appellate court shall
 5-32 render appropriate orders after reviewing the records and appellate
 5-33 briefs, if any.

5-34 (h) Except on a showing of good cause, the appellate court
 5-35 may not extend the time for filing a record or appellate brief.

5-36 SECTION 10. Subsection (d), Section 264.101, Family Code,
 5-37 is amended to read as follows:

5-38 (d) The Board of Protective and Regulatory Services may
 5-39 adopt rules that establish criteria and guidelines for the payment
 5-40 of foster care, including medical care, subject to the availability
 5-41 of funds, for a child and for providing care for a child after the
 5-42 child becomes 18 years of age if the child is:

5-43 (1) regularly attending high school, an institution of
 5-44 higher education, or a vocational or technical program; or
 5-45 (2) medically fragile or has complex medical needs.

5-46 SECTION 11. Section 162.006, Family Code, as amended by
 5-47 this Act, applies only to records regarding the history of a child
 5-48 placed for adoption that are provided to a person on or after the
 5-49 effective date of this Act. Records regarding the history of a
 5-50 child placed for adoption that are provided to a person before the
 5-51 effective date of this Act are governed by the law in effect on the
 5-52 date the records were provided, and the former law is continued in
 5-53 effect for that purpose.

5-54 SECTION 12. Section 261.002, Family Code, as amended by
 5-55 this Act, applies only to a report of the exploitation of a child
 5-56 made on or after the effective date of this Act. A report of the
 5-57 exploitation of a child made before the effective date of this Act
 5-58 is governed by the law in effect on the date the report was made, and
 5-59 the former law is continued in effect for that purpose.

5-60 SECTION 13. Sections 262.101 and 262.107, Family Code, as
 5-61 amended by this Act, apply only to a suit affecting the parent-child
 5-62 relationship requesting an order to take possession of a child that
 5-63 is filed on or after the effective date of this Act, or to a child
 5-64 who is taken into possession by a governmental entity without a
 5-65 court order on or after that date. A suit filed before the
 5-66 effective date of this Act, or a child who is taken into possession
 5-67 before that date, is governed by the law in effect on the date the
 5-68 suit was filed or the child was taken into possession, and the
 5-69 former law is continued in effect for that purpose.

6-1 SECTION 14. Section 262.112, Family Code, as amended by
6-2 this Act, and Section 263.405, Family Code, as added by Chapter
6-3 1090, Acts of the 77th Legislature, Regular Session, 2001, and
6-4 amended by this Act, apply only to the appeal of a trial court
6-5 ruling or order that becomes final on or after the effective date of
6-6 this Act. The appeal of a trial court ruling or order that became
6-7 final before the effective date of this Act is governed by the law
6-8 in effect on the date the ruling or order became final, and the
6-9 former law is continued in effect for that purpose.

6-10 SECTION 15. This Act takes effect September 1, 2003.

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