

By: Gonzalez Toureilles

H.B. No. 2501

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain suits affecting the parent-child relationship
3 referred to an associate judge.

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

5 SECTION 1. Section 201.009(e), Family Code, is amended to
6 read as follows:

7 (e) On a request for a de novo hearing [~~appeal of the~~
8 ~~associate judge's report or proposed order~~], the referring court
9 may consider testimony or other evidence in the record, if the
10 record is taken by a court reporter, in addition to witnesses or
11 other matters presented under Section 201.015.

12 SECTION 2. Sections 201.011(a), (b), and (d), Family Code,
13 are amended to read as follows:

14 (a) The associate judge's report may contain the associate
15 judge's findings, conclusions, or recommendations and may be in the
16 form of [~~, including~~] a proposed order. The associate judge's
17 report must be in writing in the form directed by the referring
18 court. [~~The form may be a notation on the referring court's docket~~
19 ~~sheet.~~]

20 (b) After a hearing, the associate judge shall provide the
21 parties participating in the hearing notice of the substance of the
22 associate judge's report, including any [~~The notice may be given~~
23 ~~in the form of a~~] proposed order.

24 (d) [~~The associate judge shall certify the date of mailing~~

1 ~~of notice by certified mail or the date of the facsimile~~
2 ~~transmission.]~~ There is a rebuttable presumption that notice is
3 received on the date stated on:

4 (1) the signed return receipt, if notice was provided
5 by certified mail; or

6 (2) the confirmation page produced by the facsimile
7 machine, if notice was provided by facsimile transmission.

8 SECTION 3. The heading to Section 201.012, Family Code, is
9 amended to read as follows:

10 Sec. 201.012. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE
11 REFERRING COURT [~~APPEAL~~].

12 SECTION 4. Section 201.012(a), Family Code, is amended to
13 read as follows:

14 (a) Notice of the right to a de novo hearing before [~~of~~
15 ~~appeal to the judge of]~~ the referring court shall be given to all
16 parties.

17 SECTION 5. Section 201.013, Family Code, is amended to read
18 as follows:

19 Sec. 201.013. ORDER OF COURT. (a) Pending a de novo hearing
20 before [~~appeal of the associate judge's report, including any~~
21 ~~proposed order, to]~~ the referring court, a proposed order or
22 judgment [~~the decisions and recommendations]~~ of the associate judge
23 is [~~are~~] in full force and effect and is [~~are~~] enforceable as an
24 order or judgment of the referring court, except for an order
25 [~~orders~~] providing for the appointment of a receiver.

26 (b) Except as provided by Section 201.007(c), if a request
27 for a de novo hearing before [~~an appeal to]~~ the referring court is

1 not timely filed or the right to a de novo hearing before [~~an appeal~~
2 ~~to~~] the referring court is waived, the proposed order or judgment
3 [~~findings and recommendations~~] of the associate judge becomes
4 [~~become~~] the order or judgment of the referring court only on the
5 referring court's signing the proposed [~~an~~] order or judgment
6 [~~conforming to the associate judge's report~~].

7 (c) An order by an associate judge for the temporary
8 detention or incarceration of a witness or party shall be presented
9 to the referring court on the day the witness or party is detained
10 or incarcerated. The referring court, without prejudice to the
11 right to a de novo hearing [~~of appeal~~] provided by Section 201.015,
12 may approve the temporary detention or incarceration or may order
13 the release of the party or witness, with or without bond, pending a
14 de novo hearing [~~appeal~~]. If the referring court is not immediately
15 available, the associate judge may order the release of the party or
16 witness, with or without bond, pending a de novo hearing [~~appeal~~] or
17 may continue the person's detention or incarceration for not more
18 than 72 hours.

19 SECTION 6. Section 201.014, Family Code, is amended to read
20 as follows:

21 Sec. 201.014. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED
22 ORDER OR JUDGMENT [~~REPORT~~]. (a) Unless a party files a written
23 request for a de novo hearing before the referring court [~~notice of~~
24 ~~appeal~~], the referring court may:

25 (1) adopt, modify, or reject the associate judge's
26 [~~report, including any~~] proposed order or judgment;

27 (2) hear further evidence; or

1 (3) recommit the matter to the associate judge for
2 further proceedings.

3 (b) Regardless of whether a party files a written request
4 for a de novo hearing before the referring court, a proposed order
5 or judgment rendered by an associate judge in a suit filed by the
6 Department of Family and Protective Services that meets the
7 requirements of Section 263.401(d) is considered a final order for
8 purposes of Section 263.401.

9 SECTION 7. Section 201.015, Family Code, is amended to read
10 as follows:

11 Sec. 201.015. DE NOVO HEARING BEFORE ~~[APPEAL TO]~~ REFERRING
12 COURT. (a) A party may request a de novo hearing before the
13 referring court ~~[appeal an associate judge's report]~~ by filing with
14 the clerk of the referring court a written request ~~[notice of~~
15 ~~appeal]~~ not later than the seventh working ~~[third]~~ day after the
16 date the party receives notice of the substance of the associate
17 judge's report as provided by Section 201.011.

18 (b) A request for a de novo hearing under this section must
19 specify the issues that will be presented to the referring court.
20 ~~[An appeal to the referring court must be in writing specifying the~~
21 ~~findings and conclusions of the associate judge to which the party~~
22 ~~objects. The appeal is limited to the specified findings and~~
23 ~~conclusions.]~~

24 (c) In the de novo hearing before ~~[On appeal to]~~ the
25 referring court, the parties may present witnesses ~~[as in a hearing~~
26 ~~de novo]~~ on the issues specified ~~[raised]~~ in the request for hearing
27 ~~[appeal]~~. The referring court may also consider the record from the

1 hearing before the associate judge, including the charge to and
2 verdict returned by a jury, if the record was taken by a court
3 reporter.

4 (d) Notice of a request for a de novo hearing before [~~an~~
5 ~~appeal to~~] the referring court shall be given to the opposing
6 attorney under Rule 21a, Texas Rules of Civil Procedure.

7 (e) If a request for a de novo hearing before [~~an appeal to~~]
8 the referring court is filed by a party, any other party may file a
9 request for a de novo hearing before [~~an appeal to~~] the referring
10 court not later than the seventh working day after the date the
11 initial request [~~appeal~~] was filed.

12 (f) The referring court, after notice to the parties, shall
13 hold a de novo hearing [~~on all appeals~~] not later than the 30th day
14 after the date on which the initial request for a de novo hearing
15 [~~appeal~~] was filed with the clerk of the referring court.

16 (g) Before the start of a hearing by an associate judge, the
17 parties may waive the right of a de novo hearing before [~~appeal to~~]
18 the referring court in writing or on the record.

19 (h) The denial [~~Denial~~] of relief to a party after a de novo
20 hearing [~~an appeal~~] under this section or a party's waiver of the
21 right to a de novo hearing before [~~appeal to~~] the referring court
22 does not affect the right of a party to file a motion for new trial,
23 motion for judgment notwithstanding the verdict, or other
24 post-trial motion.

25 (i) A party may not demand a second jury in a de novo hearing
26 before the referring court if the associate judge's [~~on appeal of an~~
27 ~~associate judge's report, including any~~] proposed order or judgment

1 resulted [~~, resulting~~] from a jury trial.

2 SECTION 8. Section 201.016(a), Family Code, is amended to
3 read as follows:

4 (a) A party's failure [~~Failure~~] to request a de novo hearing
5 before [~~appeal to~~] the referring court or a party's waiver of the
6 right to request a de novo hearing before [~~, by waiver or otherwise,~~
7 ~~the approval by~~] the referring court [~~of an associate judge's~~
8 ~~report~~] does not deprive the [~~a~~] party of the right to appeal to or
9 request other relief from a court of appeals or the supreme court.

10 SECTION 9. Section 201.1041, Family Code, is amended to
11 read as follows:

12 Sec. 201.1041. JUDICIAL ACTION ON ASSOCIATE JUDGE'S
13 PROPOSED ORDER OR JUDGMENT [~~REPORT~~]. (a) If a request for a de novo
14 hearing before [~~an appeal to~~] the referring court is not timely
15 filed or the right to a de novo hearing before the referring court
16 [~~appeal~~] is waived, the proposed order or judgment [~~a~~
17 ~~recommendation~~] of the associate judge, other than a proposed order
18 or judgment providing for [~~recommendation of~~] enforcement by
19 contempt or [~~a recommendation of~~] the immediate incarceration of a
20 party, shall become the [~~an~~] order or judgment of the referring
21 court by operation of law without ratification by the referring
22 court.

23 (b) An associate judge's proposed order or judgment
24 providing for [~~report that recommends~~] enforcement by contempt or
25 the immediate incarceration of a party becomes an order of the
26 referring court only if:

27 (1) the referring court signs an order adopting the

1 associate judge's proposed order or judgment [~~recommendation~~]; and

2 (2) the order or judgment meets the requirements of
3 Section 157.166.

4 (c) Except as provided by Subsection (b), a proposed order
5 or judgment [~~the decisions and recommendations~~] of the associate
6 judge is in [~~have~~] full force and effect and is [~~are~~] enforceable as
7 an order or judgment of the referring court pending a de novo
8 hearing before [~~during an appeal of the associate judge's report~~
9 ~~to~~] the referring court.

10 SECTION 10. Section 201.1042, Family Code, is amended to
11 read as follows:

12 Sec. 201.1042. DE NOVO HEARING BEFORE [~~APPEAL TO~~] REFERRING
13 COURT. (a) Except as provided by this section, Section 201.015
14 applies to a request for a de novo hearing before the referring
15 court [~~an appeal of the associate judge's recommendations~~].

16 (b) The party requesting a de novo hearing before the
17 referring court [~~appealing an associate judge's recommendation~~]
18 shall file notice with the clerk of the referring court not later
19 than the seventh working day after the date the associate judge
20 signs the proposed order or judgment [~~and the clerk of the court~~].

21 (c) A respondent who timely files a request for a de novo
22 hearing on [~~an appeal of~~] an associate judge's proposed order or
23 judgment providing for [~~report recommending~~] incarceration [~~after~~
24 ~~a finding of contempt~~] shall be brought before the referring court
25 not later than the first working day after the date on which the
26 respondent files the request for a de novo hearing [~~appeal~~]. The
27 referring court shall determine whether the respondent should be

1 released on bond or whether the respondent's appearance in court at
2 a designated time and place can be otherwise assured.

3 (d) If the respondent under Subsection (c) is released on
4 bond or other security, the referring court shall condition the
5 bond or other security on the respondent's promise to appear in
6 court for a de novo hearing [~~on the appeal~~] at a designated date,
7 time, and place, and the referring court shall give the respondent
8 notice of the hearing in open court. No other notice to the
9 respondent is required.

10 (e) If the respondent under Subsection (c) is released
11 without posting bond or security, the court shall set a de novo
12 hearing [~~on the appeal~~] at a designated date, time, and place and
13 give the respondent notice of the hearing in open court. No other
14 notice to the respondent is required.

15 (f) If the referring court is not satisfied that the
16 respondent's appearance in court can be assured and the respondent
17 remains incarcerated, a de novo hearing [~~on the appeal~~] shall be
18 held as soon as practicable, but not later than the fifth day after
19 the date the respondent's request for a de novo hearing before the
20 referring court [~~notice of appeal~~] was filed, unless the respondent
21 or [~~and~~], if represented, the respondent's attorney waives [~~waive~~]
22 the accelerated hearing.

23 (g) Until a de novo hearing is held [~~on a timely filed~~
24 ~~appeal~~] under this section and [~~or~~] the referring court has signed
25 [~~rendered~~] an order or judgment or has ruled on a timely filed
26 motion for new trial or a motion to vacate, correct, or reform a
27 judgment, an associate judge may not hold a hearing on the

1 respondent's compliance with conditions in the associate judge's
2 proposed order or judgment [~~report~~] for suspension of commitment or
3 on a motion to revoke the respondent's community supervision and
4 suspension of commitment.

5 SECTION 11. Section 201.111, Family Code, is amended to
6 read as follows:

7 Sec. 201.111. TIME TO ACT ON ASSOCIATE JUDGE'S PROPOSED
8 ORDER OR JUDGMENT [~~REPORT~~] THAT INCLUDES RECOMMENDED FINDING OF
9 CONTEMPT. (a) Not later than the 10th day after the date an
10 associate judge's proposed order or judgment [~~report~~] recommending
11 a finding of contempt is signed [~~filed~~], the referring court shall:

12 (1) adopt, modify [~~approve~~], or reject the proposed
13 order or judgment [~~report~~];

14 (2) hear further evidence; or

15 (3) recommit the matter for further proceedings.

16 (b) The time limit in Subsection (a) does not apply if a
17 party has filed a written request for a de novo hearing before
18 [~~notice of appeal to~~] the referring court.

19 SECTION 12. Section 201.2041, Family Code, is amended to
20 read as follows:

21 Sec. 201.2041. JUDICIAL ACTION ON ASSOCIATE JUDGE'S
22 PROPOSED ORDER OR JUDGMENT [~~REPORT~~]. (a) If a request for a de novo
23 hearing before [~~an appeal to~~] the referring court is not timely
24 filed or the right to a de novo hearing before the referring court
25 [~~appeal~~] is waived, the proposed order or judgment [~~a~~
26 ~~recommendation~~] of the associate judge becomes the [~~an~~] order or
27 judgment of the referring court by operation of law without

1 ratification by the referring court.

2 (b) Regardless of whether a de novo hearing is requested
3 before the referring court, a proposed order or judgment rendered
4 by an associate judge that meets the requirements of Section
5 263.401(d) is considered a final order for purposes of Section
6 263.401.

7 SECTION 13. Section 201.2042, Family Code, is amended to
8 read as follows:

9 Sec. 201.2042. DE NOVO HEARING BEFORE ~~[APPEAL TO]~~ REFERRING
10 COURT. (a) Except as provided by this section, Section 201.015
11 applies to a request for a de novo hearing before the referring
12 court ~~[an appeal of the associate judge's recommendations]~~.

13 (b) The party requesting a de novo hearing before the
14 referring court ~~[appealing an associate judge's recommendation]~~
15 shall file notice with the referring court and the clerk of the
16 referring court.

17 SECTION 14. The changes in law made by this Act apply only
18 to a suit affecting the parent-child relationship filed on or after
19 the effective date of this Act. A suit affecting the parent-child
20 relationship filed before the effective date of this Act is
21 governed by the law in effect on the date the suit was filed, and the
22 former law is continued in effect for that purpose.

23 SECTION 15. This Act takes effect September 1, 2007.