

1-1 By: Gonzalez Toureilles (Senate Sponsor - Watson) H.B. No. 2501
1-2 (In the Senate - Received from the House May 14, 2007;
1-3 May 15, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 19, 2007, reported favorably by the following
1-5 vote: Yeas 4, Nays 0; May 19, 2007, 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 referred to an associate judge.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 201.009(e), Family Code, is amended to
1-12 read as follows:

1-13 (e) On a request for a de novo hearing [~~appeal of the~~
1-14 ~~associate judge's report or proposed order~~], the referring court
1-15 may consider testimony or other evidence in the record, if the
1-16 record is taken by a court reporter, in addition to witnesses or
1-17 other matters presented under Section 201.015.

1-18 SECTION 2. Sections 201.011(a), (b), and (d), Family Code,
1-19 are amended to read as follows:

1-20 (a) The associate judge's report may contain the associate
1-21 judge's findings, conclusions, or recommendations and may be in the
1-22 form of [~~, including~~] a proposed order. The associate judge's
1-23 report must be in writing in the form directed by the referring
1-24 court. [~~The form may be a notation on the referring court's docket~~
1-25 ~~sheet.~~]

1-26 (b) After a hearing, the associate judge shall provide the
1-27 parties participating in the hearing notice of the substance of the
1-28 associate judge's report, including any [~~. The notice may be given~~
1-29 ~~in the form of a~~] proposed order.

1-30 (d) [~~The associate judge shall certify the date of mailing~~
1-31 ~~of notice by certified mail or the date of the facsimile~~
1-32 ~~transmission.~~] There is a rebuttable presumption that notice is
1-33 received on the date stated on:

1-34 (1) the signed return receipt, if notice was provided
1-35 by certified mail; or

1-36 (2) the confirmation page produced by the facsimile
1-37 machine, if notice was provided by facsimile transmission.

1-38 SECTION 3. The heading to Section 201.012, Family Code, is
1-39 amended to read as follows:

1-40 Sec. 201.012. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE
1-41 REFERRING COURT [~~APPEAL~~].

1-42 SECTION 4. Section 201.012(a), Family Code, is amended to
1-43 read as follows:

1-44 (a) Notice of the right to a de novo hearing before [~~of~~
1-45 ~~appeal to the judge of~~] the referring court shall be given to all
1-46 parties.

1-47 SECTION 5. Section 201.013, Family Code, is amended to read
1-48 as follows:

1-49 Sec. 201.013. ORDER OF COURT. (a) Pending a de novo hearing
1-50 before [~~appeal of the associate judge's report, including any~~
1-51 ~~proposed order, to~~] the referring court, a proposed order or
1-52 judgment [~~the decisions and recommendations~~] of the associate judge
1-53 is [~~are~~] in full force and effect and is [~~are~~] enforceable as an
1-54 order or judgment of the referring court, except for an order
1-55 [~~orders~~] providing for the appointment of a receiver.

1-56 (b) Except as provided by Section 201.007(c), if a request
1-57 for a de novo hearing before [~~an appeal to~~] the referring court is
1-58 not timely filed or the right to a de novo hearing before [~~an appeal~~
1-59 ~~to~~] the referring court is waived, the proposed order or judgment
1-60 [~~findings and recommendations~~] of the associate judge becomes
1-61 [~~become~~] the order or judgment of the referring court only on the
1-62 referring court's signing the proposed [~~an~~] order or judgment
1-63 [~~conforming to the associate judge's report~~].

1-64 (c) An order by an associate judge for the temporary

2-1 detention or incarceration of a witness or party shall be presented
 2-2 to the referring court on the day the witness or party is detained
 2-3 or incarcerated. The referring court, without prejudice to the
 2-4 right to a de novo hearing [~~of appeal~~] provided by Section 201.015,
 2-5 may approve the temporary detention or incarceration or may order
 2-6 the release of the party or witness, with or without bond, pending a
 2-7 de novo hearing [~~appeal~~]. If the referring court is not immediately
 2-8 available, the associate judge may order the release of the party or
 2-9 witness, with or without bond, pending a de novo hearing [~~appeal~~] or
 2-10 may continue the person's detention or incarceration for not more
 2-11 than 72 hours.

2-12 SECTION 6. Section 201.014, Family Code, is amended to read
 2-13 as follows:

2-14 Sec. 201.014. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED
 2-15 ORDER OR JUDGMENT [~~REPORT~~]. (a) Unless a party files a written
 2-16 request for a de novo hearing before the referring court [~~notice of~~
 2-17 ~~appeal~~], the referring court may:

2-18 (1) adopt, modify, or reject the associate judge's
 2-19 [~~report, including any~~] proposed order or judgment;

2-20 (2) hear further evidence; or

2-21 (3) recommit the matter to the associate judge for
 2-22 further proceedings.

2-23 (b) Regardless of whether a party files a written request
 2-24 for a de novo hearing before the referring court, a proposed order
 2-25 or judgment rendered by an associate judge in a suit filed by the
 2-26 Department of Family and Protective Services that meets the
 2-27 requirements of Section 263.401(d) is considered a final order for
 2-28 purposes of Section 263.401.

2-29 SECTION 7. Section 201.015, Family Code, is amended to read
 2-30 as follows:

2-31 Sec. 201.015. DE NOVO HEARING BEFORE [~~APPEAL TO~~] REFERRING
 2-32 COURT. (a) A party may request a de novo hearing before the
 2-33 referring court [~~appeal an associate judge's report~~] by filing with
 2-34 the clerk of the referring court a written request [~~notice of~~
 2-35 ~~appeal~~] not later than the seventh working [~~third~~] day after the
 2-36 date the party receives notice of the substance of the associate
 2-37 judge's report as provided by Section 201.011.

2-38 (b) A request for a de novo hearing under this section must
 2-39 specify the issues that will be presented to the referring court.
 2-40 [~~An appeal to the referring court must be in writing specifying the~~
 2-41 ~~findings and conclusions of the associate judge to which the party~~
 2-42 ~~objects. The appeal is limited to the specified findings and~~
 2-43 ~~conclusions.~~]

2-44 (c) In the de novo hearing before [~~On appeal to~~] the
 2-45 referring court, the parties may present witnesses [~~as in a hearing~~
 2-46 ~~de novo~~] on the issues specified [~~raised~~] in the request for hearing
 2-47 [~~appeal~~]. The referring court may also consider the record from the
 2-48 hearing before the associate judge, including the charge to and
 2-49 verdict returned by a jury, if the record was taken by a court
 2-50 reporter.

2-51 (d) Notice of a request for a de novo hearing before [~~an~~
 2-52 ~~appeal to~~] the referring court shall be given to the opposing
 2-53 attorney under Rule 21a, Texas Rules of Civil Procedure.

2-54 (e) If a request for a de novo hearing before [~~an appeal to~~]
 2-55 the referring court is filed by a party, any other party may file a
 2-56 request for a de novo hearing before [~~an appeal to~~] the referring
 2-57 court not later than the seventh working day after the date the
 2-58 initial request [~~appeal~~] was filed.

2-59 (f) The referring court, after notice to the parties, shall
 2-60 hold a de novo hearing [~~on all appeals~~] not later than the 30th day
 2-61 after the date on which the initial request for a de novo hearing
 2-62 [~~appeal~~] was filed with the clerk of the referring court.

2-63 (g) Before the start of a hearing by an associate judge, the
 2-64 parties may waive the right of a de novo hearing before [~~appeal to~~]
 2-65 the referring court in writing or on the record.

2-66 (h) The denial [~~Denial~~] of relief to a party after a de novo
 2-67 hearing [~~an appeal~~] under this section or a party's waiver of the
 2-68 right to a de novo hearing before [~~appeal to~~] the referring court
 2-69 does not affect the right of a party to file a motion for new trial,

3-1 motion for judgment notwithstanding the verdict, or other
 3-2 post-trial motion.

3-3 (i) A party may not demand a second jury in a de novo hearing
 3-4 before the referring court if the associate judge's [on appeal of an
 3-5 associate judge's report, including any] proposed order or judgment
 3-6 resulted [, resulting] from a jury trial.

3-7 SECTION 8. Section 201.016(a), Family Code, is amended to
 3-8 read as follows:

3-9 (a) A party's failure [Failure] to request a de novo hearing
 3-10 before [appeal to] the referring court or a party's waiver of the
 3-11 right to request a de novo hearing before [, by waiver or otherwise,
 3-12 the approval by] the referring court [of an associate judge's
 3-13 report] does not deprive the [a] party of the right to appeal to or
 3-14 request other relief from a court of appeals or the supreme court.

3-15 SECTION 9. Section 201.1041, Family Code, is amended to
 3-16 read as follows:

3-17 Sec. 201.1041. JUDICIAL ACTION ON ASSOCIATE JUDGE'S
 3-18 PROPOSED ORDER OR JUDGMENT [REPORT]. (a) If a request for a de novo
 3-19 hearing before [an appeal to] the referring court is not timely
 3-20 filed or the right to a de novo hearing before the referring court
 3-21 [appeal] is waived, the proposed order or judgment [a
 3-22 recommendation] of the associate judge, other than a proposed order
 3-23 or judgment providing for [recommendation of] enforcement by
 3-24 contempt or [a recommendation of] the immediate incarceration of a
 3-25 party, shall become the [an] order or judgment of the referring
 3-26 court by operation of law without ratification by the referring
 3-27 court.

3-28 (b) An associate judge's proposed order or judgment
 3-29 providing for [report that recommends] enforcement by contempt or
 3-30 the immediate incarceration of a party becomes an order of the
 3-31 referring court only if:

3-32 (1) the referring court signs an order adopting the
 3-33 associate judge's proposed order or judgment [recommendation]; and

3-34 (2) the order or judgment meets the requirements of
 3-35 Section 157.166.

3-36 (c) Except as provided by Subsection (b), a proposed order
 3-37 or judgment [the decisions and recommendations] of the associate
 3-38 judge is in [have] full force and effect and is [are] enforceable as
 3-39 an order or judgment of the referring court pending a de novo
 3-40 hearing before [during an appeal of the associate judge's report
 3-41 to] the referring court.

3-42 SECTION 10. Section 201.1042, Family Code, is amended to
 3-43 read as follows:

3-44 Sec. 201.1042. DE NOVO HEARING BEFORE [APPEAL TO] REFERRING
 3-45 COURT. (a) Except as provided by this section, Section 201.015
 3-46 applies to a request for a de novo hearing before the referring
 3-47 court [an appeal of the associate judge's recommendations].

3-48 (b) The party requesting a de novo hearing before the
 3-49 referring court [appealing an associate judge's recommendation]
 3-50 shall file notice with the clerk of the referring court not later
 3-51 than the seventh working day after the date the associate judge
 3-52 signs the proposed order or judgment [and the clerk of the court].

3-53 (c) A respondent who timely files a request for a de novo
 3-54 hearing on [an appeal of] an associate judge's proposed order or
 3-55 judgment providing for [report recommending] incarceration [after
 3-56 a finding of contempt] shall be brought before the referring court
 3-57 not later than the first working day after the date on which the
 3-58 respondent files the request for a de novo hearing [appeal]. The
 3-59 referring court shall determine whether the respondent should be
 3-60 released on bond or whether the respondent's appearance in court at
 3-61 a designated time and place can be otherwise assured.

3-62 (d) If the respondent under Subsection (c) is released on
 3-63 bond or other security, the referring court shall condition the
 3-64 bond or other security on the respondent's promise to appear in
 3-65 court for a de novo hearing [on the appeal] at a designated date,
 3-66 time, and place, and the referring court shall give the respondent
 3-67 notice of the hearing in open court. No other notice to the
 3-68 respondent is required.

3-69 (e) If the respondent under Subsection (c) is released

4-1 without posting bond or security, the court shall set a de novo
4-2 hearing ~~[on the appeal]~~ at a designated date, time, and place and
4-3 give the respondent notice of the hearing in open court. No other
4-4 notice to the respondent is required.

4-5 (f) If the referring court is not satisfied that the
4-6 respondent's appearance in court can be assured and the respondent
4-7 remains incarcerated, a de novo hearing ~~[on the appeal]~~ shall be
4-8 held as soon as practicable, but not later than the fifth day after
4-9 the date the respondent's request for a de novo hearing before the
4-10 referring court ~~[notice of appeal]~~ was filed, unless the respondent
4-11 or ~~[and]~~, if represented, the respondent's attorney waives ~~[waive]~~
4-12 the accelerated hearing.

4-13 (g) Until a de novo hearing is held ~~[on a timely filed~~
4-14 ~~appeal]~~ under this section and ~~[or]~~ the referring court has signed
4-15 ~~[rendered]~~ an order or judgment or has ruled on a timely filed
4-16 motion for new trial or a motion to vacate, correct, or reform a
4-17 judgment, an associate judge may not hold a hearing on the
4-18 respondent's compliance with conditions in the associate judge's
4-19 proposed order or judgment ~~[report]~~ for suspension of commitment or
4-20 on a motion to revoke the respondent's community supervision and
4-21 suspension of commitment.

4-22 SECTION 11. Section 201.111, Family Code, is amended to
4-23 read as follows:

4-24 Sec. 201.111. TIME TO ACT ON ASSOCIATE JUDGE'S PROPOSED
4-25 ORDER OR JUDGMENT ~~[REPORT]~~ THAT INCLUDES RECOMMENDED FINDING OF
4-26 CONTEMPT. (a) Not later than the 10th day after the date an
4-27 associate judge's proposed order or judgment ~~[report]~~ recommending
4-28 a finding of contempt is signed ~~[filed]~~, the referring court shall:

4-29 (1) adopt, modify ~~[approve]~~, or reject the proposed
4-30 order or judgment ~~[report]~~;

4-31 (2) hear further evidence; or

4-32 (3) recommit the matter for further proceedings.

4-33 (b) The time limit in Subsection (a) does not apply if a
4-34 party has filed a written request for a de novo hearing before
4-35 ~~[notice of appeal to]~~ the referring court.

4-36 SECTION 12. Section 201.2041, Family Code, is amended to
4-37 read as follows:

4-38 Sec. 201.2041. JUDICIAL ACTION ON ASSOCIATE JUDGE'S
4-39 PROPOSED ORDER OR JUDGMENT ~~[REPORT]~~. (a) If a request for a de novo
4-40 hearing before ~~[an appeal to]~~ the referring court is not timely
4-41 filed or the right to a de novo hearing before the referring court
4-42 ~~[appeal]~~ is waived, the proposed order or judgment ~~[a~~
4-43 ~~recommendation]~~ of the associate judge becomes the ~~[an]~~ order or
4-44 judgment of the referring court by operation of law without
4-45 ratification by the referring court.

4-46 (b) Regardless of whether a de novo hearing is requested
4-47 before the referring court, a proposed order or judgment rendered
4-48 by an associate judge that meets the requirements of Section
4-49 263.401(d) is considered a final order for purposes of Section
4-50 263.401.

4-51 SECTION 13. Section 201.2042, Family Code, is amended to
4-52 read as follows:

4-53 Sec. 201.2042. DE NOVO HEARING BEFORE ~~[APPEAL TO]~~ REFERRING
4-54 COURT. (a) Except as provided by this section, Section 201.015
4-55 applies to a request for a de novo hearing before the referring
4-56 court ~~[an appeal of the associate judge's recommendations]~~.

4-57 (b) The party requesting a de novo hearing before the
4-58 referring court ~~[appealing an associate judge's recommendation]~~
4-59 shall file notice with the referring court and the clerk of the
4-60 referring court.

4-61 SECTION 14. The changes in law made by this Act apply only
4-62 to a suit affecting the parent-child relationship filed on or after
4-63 the effective date of this Act. A suit affecting the parent-child
4-64 relationship filed before the effective date of this Act is
4-65 governed by the law in effect on the date the suit was filed, and the
4-66 former law is continued in effect for that purpose.

4-67 SECTION 15. This Act takes effect September 1, 2007.

4-68 * * * * *