

By: Uresti

S.B. No. 1643

A BILL TO BE ENTITLED

AN ACT

relating to mandatory dismissal deadlines and extended jurisdiction in suits affecting the parent-child relationship to which the Department of Family and Protective Services is a party.

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

SECTION 1. Subsection (b), Section 201.2041, Family Code, is amended to read as follows:

(b) Regardless of whether a de novo hearing is requested before the referring court, ~~[a proposed order or judgment rendered by an associate judge that meets the requirements of Section 263.401(d) is considered a final order]~~ for purposes of Section 263.401, the suit is not required to be dismissed if the associate judge commences the trial on the merits prior to the applicable deadline for dismissal.

SECTION 2. Section 263.401, Family Code, is amended by adding Subsection (b-1) and amending Subsection (c) to read as follows:

(b-1) If, after commencement of the initial trial on the merits in the time described by Subsection (a) or (b), the court grants a motion for new trial or a mistrial, the court may retain the suit on the court's docket. If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules a new date, not later than the 180th day after the date the motion for new trial or mistrial is granted, on

1 which the suit will be dismissed if the new trial has not commenced;

2 (2) makes further temporary orders for the safety and
3 welfare of the child as necessary to avoid further delay in
4 resolving the suit; and

5 (3) sets the trial on the merits to commence on a date
6 not later than the date specified under Subdivision (1).

7 (c) If the court grants an extension under Subsection (b) or
8 a new trial or mistrial under Subsection (b-1) but does not commence
9 the trial on the merits before the required new date for dismissal
10 [~~under Subsection (b)~~], the court shall dismiss the suit. The court
11 may not grant an additional extension that extends the suit beyond
12 the required date for dismissal under Subsection (b) or (b-1).

13 SECTION 3. Section 263.403, Family Code, is amended by
14 adding Subsections (c-1) and (c-2) to read as follows:

15 (c-1) If, after commencement of the initial trial on the
16 merits in the times described by Subsection (b) or (c), the court
17 grants a motion for new trial or a mistrial, the court may retain
18 the suit on the court's docket. If the court retains the suit on the
19 court's docket, the court shall render an order in which the court:

20 (1) schedules a new date, not later than the 180th day
21 after the date the motion for new trial or mistrial is granted, on
22 which the suit will be dismissed if the new trial has not commenced;

23 (2) makes further temporary orders for the safety and
24 welfare of the child as necessary to avoid further delay in
25 resolving the suit; and

26 (3) sets the trial on the merits to commence on a date
27 not later than the date specified under Subdivision (1).

1 (c-2) If the court grants an extension under Subsection (b)
2 or (c) or a new trial or mistrial under Subsection (c-1) but does
3 not commence the trial on the merits before the required new date
4 for dismissal, the court shall dismiss the suit. The court may not
5 grant an additional extension that extends the suit beyond the
6 required date for dismissal under Subsection (b), (c), or (c-1).

7 SECTION 4. Section 263.601, Family Code, is amended to read
8 as follows:

9 Sec. 263.601. DEFINITIONS. In this subchapter:

10 (1) "Foster care" means a voluntary residential living
11 arrangement with a foster parent or other residential child-care
12 provider that is:

13 (A) licensed or approved by the department or
14 verified by a licensed child-placing agency; and

15 (B) paid under a contract with the department.

16 (2) "Guardianship services" means the services
17 provided by the Department of Aging and Disability Services under
18 Subchapter E, Chapter 161, Human Resources Code.

19 (3) "Institution" means a residential facility that is
20 operated, licensed, registered, certified, or verified by a state
21 agency other than the department. The term includes a residential
22 service provider under a Medicaid waiver program authorized under
23 Section 1915(c) of the federal Social Security Act that provides
24 services at a residence other than the young adult's own home.

25 (4) "Trial independence period" means a period of not
26 less than six months, or for such longer period as a court may order
27 not to exceed 12 months, during which a young adult exits foster

1 care with the option to resume foster care under the continuing
2 extended jurisdiction of the court.

3 (5) "Young adult" means a person between 18 and 21
4 years of age who:

5 (A) was in the conservatorship of the department
6 on the day before the person's 18th birthday; and

7 (B) after the person's 18th birthday, resides in
8 foster care or receives transitional living services from the
9 department.

10 SECTION 5. Section 263.602, Family Code, is amended to read
11 as follows:

12 Sec. 263.602. EXTENDED JURISDICTION AND TRIAL INDEPENDENCE
13 FOR YOUTH IN EXTENDED FOSTER CARE. (a) A court that had
14 continuing, exclusive jurisdiction over a young adult on the day
15 before the young adult's 18th birthday continues to have extended
16 jurisdiction over the young adult and shall retain the case on the
17 court's docket while the young adult remains in extended foster
18 care and during a trial independence period as described in this
19 section.

20 (b) A court with extended jurisdiction of a young adult who
21 remains in extended foster care shall conduct periodic extended
22 foster care review hearings every six months for the purpose of
23 reviewing and making findings regarding the following:

24 (1) whether the young adult's living arrangement is
25 safe and appropriate and whether the department has made reasonable
26 efforts to place the young adult in the least restrictive
27 environment necessary to meet the needs of the young adult;

1 (2) whether the department is making reasonable
2 efforts to finalize the permanency plan that is in effect for the
3 young adult, including a permanency plan for independent living;

4 (3) for a young adult whose permanency plan is
5 independent living, whether:

6 (A) the young adult participated in the
7 development of a plan of service;

8 (B) the young adult's plan of service reflects
9 the independent living skills and appropriate services needed to
10 achieve independence by the projected date; and

11 (C) the young adult is making reasonable progress
12 in developing the skills needed to achieve independence by the
13 projected date; and

14 (4) whether additional services that the department is
15 authorized to provide under statute or department rules or policy,
16 either directly or through a contracted service provider, or that
17 are available in the community, are needed to meet the needs of the
18 young adult.

19 (c) No less than 10 days prior to a scheduled hearing under
20 this section, the department shall provide the court with a copy of
21 the young adult's plan of service and a court report addressing the
22 issues the court is required to review under Subsection (b).

23 (d) Notice of an extended foster care review hearing shall
24 be given as provided by Rule 21a, Texas Rules of Civil Procedure, to
25 the following persons, each of whom has a right to present evidence
26 and be heard at the hearing:

27 (1) the young adult who is the subject of the suit;

- 1 (2) the department;
2 (3) the foster parent with whom the young adult is
3 placed and the licensed administrator of a child-placing agency
4 responsible for placing the young adult, if applicable;
5 (4) the director of the residential child-care
6 facility or other approved provider with whom the young adult is
7 placed, if applicable;
8 (5) each parent of the young adult whose parental
9 rights have not been terminated and who still is actively involved
10 in the life of the young adult;
11 (6) a legal guardian of the young adult, if
12 applicable; and
13 (7) the young adult's attorney ad litem, guardian ad
14 litem, and volunteer advocate, the appointment of whom has not been
15 previously dismissed by the court.
- 16 (e) If, after reviewing the young adult's plan of service
17 and court report provided under Subsection (c), and any additional
18 testimony and evidence presented at the review hearing, the court
19 determines that the young adult is entitled to additional services
20 under the department's rules or policies, or under a contract with a
21 service provider, the court may order the department to take
22 appropriate action to ensure that the young adult receives the
23 additional services to which the young adult is entitled.
- 24 (f) A court with extended jurisdiction over a young adult as
25 described in Subsection (a) shall continue to have jurisdiction
26 over the young adult and shall retain the case on the court's docket
27 until the earlier of:

1 (1) six months from the month in which the young adult
2 leaves foster care, or up to 12 months from the month in which the
3 young adult leaves foster care if so specified in a court order, for
4 the purpose of allowing the young adult to pursue a trial
5 independence period; or

6 (2) the young adult's 21st birthday.

7 (g) A court with extended jurisdiction as described in this
8 section is not required to conduct periodic hearings for a young
9 adult during a trial independence period and may not compel a young
10 adult who has exited foster care to attend a court hearing [may, at
11 the young adult's request, render an order that extends the court's
12 jurisdiction over the young adult as provided by this subchapter.

13 ~~[(b) The extended jurisdiction of the court terminates on~~
14 ~~the earlier of:~~

15 ~~[(1) the young adult's 21st birthday; or~~

16 ~~[(2) the date the young adult withdraws consent to the~~
17 ~~extension of the court's jurisdiction in writing or in court].~~

18 SECTION 6. Subchapter G, Chapter 263, Family Code, is
19 amended by adding Section 263.6021 to read as follows:

20 Sec. 263.6021. VOLUNTARY EXTENDED JURISDICTION FOR YOUNG
21 ADULT RECEIVING TRANSITIONAL LIVING SERVICES.

22 (a) Notwithstanding Section 263.602, a court that had
23 jurisdiction over a young adult on the day before the young adult's
24 18th birthday may, at the young adult's request, render an order
25 that extends the court's jurisdiction beyond the end of a trial
26 independence period if the young adult is receiving transitional
27 living services from the department.

1 (b) The extended jurisdiction of the court under this
2 section terminates on the earlier of:

3 (1) the young adult's 21st birthday; or

4 (2) the date the young adult withdraws consent to the
5 extension of the court's jurisdiction in writing or in court.

6 (c) At the request of a young adult who is receiving
7 transitional living services from the department and who consents
8 to voluntary extension of the court's jurisdiction under this
9 section, the court may hold a hearing to review the services the
10 young adult is receiving.

11 (d) Before a review hearing scheduled under this section,
12 the department must provide the court with a court report
13 summarizing the young adult's transitional living services plan,
14 services being provided to the young adult under that plan, and the
15 young adult's progress in achieving independence.

16 (e) If, after reviewing the court report and any additional
17 testimony and evidence presented at the hearing, the court
18 determines that the young adult is entitled to additional services
19 under the department's rules or policies, or under a contract with a
20 service provider, the court may order the department to take
21 appropriate action to ensure that the young adult receives the
22 additional services to which the young adult is entitled.

23 SECTION 7. Subsections (a) and (c), Section 263.603, Family
24 Code, are amended to read as follows:

25 (a) Notwithstanding Section 263.6021 [~~263.602~~], if the
26 court believes that a young adult may be incapacitated as defined by
27 Section 601(14)(B), Texas Probate Code, the court may extend its

1 jurisdiction on its own motion without the young adult's consent to
2 allow the department to refer the young adult to the Department of
3 Aging and Disability Services for guardianship services as required
4 by Section 48.209, Human Resources Code.

5 (c) If the Department of Aging and Disability Services
6 determines a guardianship is not appropriate, or the court with
7 probate jurisdiction denies the application to appoint a guardian,
8 the court under Subsection (a) may continue to extend its
9 jurisdiction over the young adult only as provided by Section
10 263.602 or 263.6021.

11 SECTION 8. Section 263.609, Family Code, is repealed.

12 SECTION 9. The changes in law made by this Act to Sections
13 263.401 and 263.403, Family Code, apply to a suit affecting the
14 parent-child relationship regardless of when filed.

15 SECTION 10. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2011.