

1-1 By: Uresti S.B. No. 1643
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Jurisprudence; May 5, 2011,
1-4 reported favorably by the following vote: Yeas 7, Nays 0;
1-5 May 5, 2011, sent to printer.)

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

1-8 relating to mandatory dismissal deadlines and extended
1-9 jurisdiction in suits affecting the parent-child relationship to
1-10 which the Department of Family and Protective Services is a party.

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

1-12 SECTION 1. Subsection (b), Section 201.2041, Family Code,
1-13 is amended to read as follows:

1-14 (b) Regardless of whether a de novo hearing is requested
1-15 before the referring court, ~~[a proposed order or judgment rendered~~
1-16 ~~by an associate judge that meets the requirements of Section~~
1-17 ~~263.401(d) is considered a final order]~~ for purposes of Section
1-18 263.401, the suit is not required to be dismissed if the associate
1-19 judge commences the trial on the merits prior to the applicable
1-20 deadline for dismissal.

1-21 SECTION 2. Section 263.401, Family Code, is amended by
1-22 adding Subsection (b-1) and amending Subsection (c) to read as
1-23 follows:

1-24 (b-1) If, after commencement of the initial trial on the
1-25 merits in the time described by Subsection (a) or (b), the court
1-26 grants a motion for new trial or a mistrial, the court may retain
1-27 the suit on the court's docket. If the court retains the suit on the
1-28 court's docket, the court shall render an order in which the court:

1-29 (1) schedules a new date, not later than the 180th day
1-30 after the date the motion for new trial or mistrial is granted, on
1-31 which the suit will be dismissed if the new trial has not commenced;

1-32 (2) makes further temporary orders for the safety and
1-33 welfare of the child as necessary to avoid further delay in
1-34 resolving the suit; and

1-35 (3) sets the trial on the merits to commence on a date
1-36 not later than the date specified under Subdivision (1).

1-37 (c) If the court grants an extension under Subsection (b) or
1-38 a new trial or mistrial under Subsection (b-1) but does not commence
1-39 the trial on the merits before the required new date for dismissal
1-40 [under Subsection (b)], the court shall dismiss the suit. The court
1-41 may not grant an additional extension that extends the suit beyond
1-42 the required date for dismissal under Subsection (b) or (b-1).

1-43 SECTION 3. Section 263.403, Family Code, is amended by
1-44 adding Subsections (c-1) and (c-2) to read as follows:

1-45 (c-1) If, after commencement of the initial trial on the
1-46 merits in the times described by Subsection (b) or (c), the court
1-47 grants a motion for new trial or a mistrial, the court may retain
1-48 the suit on the court's docket. If the court retains the suit on the
1-49 court's docket, the court shall render an order in which the court:

1-50 (1) schedules a new date, not later than the 180th day
1-51 after the date the motion for new trial or mistrial is granted, on
1-52 which the suit will be dismissed if the new trial has not commenced;

1-53 (2) makes further temporary orders for the safety and
1-54 welfare of the child as necessary to avoid further delay in
1-55 resolving the suit; and

1-56 (3) sets the trial on the merits to commence on a date
1-57 not later than the date specified under Subdivision (1).

1-58 (c-2) If the court grants an extension under Subsection (b)
1-59 or (c) or a new trial or mistrial under Subsection (c-1) but does
1-60 not commence the trial on the merits before the required new date
1-61 for dismissal, the court shall dismiss the suit. The court may not
1-62 grant an additional extension that extends the suit beyond the
1-63 required date for dismissal under Subsection (b), (c), or (c-1).

1-64 SECTION 4. Section 263.601, Family Code, is amended to read

2-1 as follows:

2-2 Sec. 263.601. DEFINITIONS. In this subchapter:

2-3 (1) "Foster care" means a voluntary residential living
2-4 arrangement with a foster parent or other residential child-care
2-5 provider that is:

2-6 (A) licensed or approved by the department or
2-7 verified by a licensed child-placing agency; and

2-8 (B) paid under a contract with the department.

2-9 (2) "Guardianship services" means the services
2-10 provided by the Department of Aging and Disability Services under
2-11 Subchapter E, Chapter 161, Human Resources Code.

2-12 (3) "Institution" means a residential facility that is
2-13 operated, licensed, registered, certified, or verified by a state
2-14 agency other than the department. The term includes a residential
2-15 service provider under a Medicaid waiver program authorized under
2-16 Section 1915(c) of the federal Social Security Act that provides
2-17 services at a residence other than the young adult's own home.

2-18 (4) "Trial independence period" means a period of not
2-19 less than six months, or for such longer period as a court may order
2-20 not to exceed 12 months, during which a young adult exits foster
2-21 care with the option to resume foster care under the continuing
2-22 extended jurisdiction of the court.

2-23 (5) "Young adult" means a person between 18 and 21
2-24 years of age who:

2-25 (A) was in the conservatorship of the department
2-26 on the day before the person's 18th birthday; and

2-27 (B) after the person's 18th birthday, resides in
2-28 foster care or receives transitional living services from the
2-29 department.

2-30 SECTION 5. Section 263.602, Family Code, is amended to read
2-31 as follows:

2-32 Sec. 263.602. EXTENDED JURISDICTION AND TRIAL INDEPENDENCE
2-33 FOR YOUTH IN EXTENDED FOSTER CARE. (a) A court that had
2-34 continuing, exclusive jurisdiction over a young adult on the day
2-35 before the young adult's 18th birthday continues to have extended
2-36 jurisdiction over the young adult and shall retain the case on the
2-37 court's docket while the young adult remains in extended foster
2-38 care and during a trial independence period as described in this
2-39 section.

2-40 (b) A court with extended jurisdiction of a young adult who
2-41 remains in extended foster care shall conduct periodic extended
2-42 foster care review hearings every six months for the purpose of
2-43 reviewing and making findings regarding the following:

2-44 (1) whether the young adult's living arrangement is
2-45 safe and appropriate and whether the department has made reasonable
2-46 efforts to place the young adult in the least restrictive
2-47 environment necessary to meet the needs of the young adult;

2-48 (2) whether the department is making reasonable
2-49 efforts to finalize the permanency plan that is in effect for the
2-50 young adult, including a permanency plan for independent living;

2-51 (3) for a young adult whose permanency plan is
2-52 independent living, whether:

2-53 (A) the young adult participated in the
2-54 development of a plan of service;

2-55 (B) the young adult's plan of service reflects
2-56 the independent living skills and appropriate services needed to
2-57 achieve independence by the projected date; and

2-58 (C) the young adult is making reasonable progress
2-59 in developing the skills needed to achieve independence by the
2-60 projected date; and

2-61 (4) whether additional services that the department is
2-62 authorized to provide under statute or department rules or policy,
2-63 either directly or through a contracted service provider, or that
2-64 are available in the community, are needed to meet the needs of the
2-65 young adult.

2-66 (c) No less than 10 days prior to a scheduled hearing under
2-67 this section, the department shall provide the court with a copy of
2-68 the young adult's plan of service and a court report addressing the
2-69 issues the court is required to review under Subsection (b).

3-1 (d) Notice of an extended foster care review hearing shall
 3-2 be given as provided by Rule 21a, Texas Rules of Civil Procedure, to
 3-3 the following persons, each of whom has a right to present evidence
 3-4 and be heard at the hearing:

3-5 (1) the young adult who is the subject of the suit;

3-6 (2) the department;

3-7 (3) the foster parent with whom the young adult is
 3-8 placed and the licensed administrator of a child placing agency
 3-9 responsible for placing the young adult, if applicable;

3-10 (4) the director of the residential child-care
 3-11 facility or other approved provider with whom the young adult is
 3-12 placed, if applicable;

3-13 (5) each parent of the young adult whose parental
 3-14 rights have not been terminated and who still is actively involved
 3-15 in the life of the young adult;

3-16 (6) a legal guardian of the young adult, if
 3-17 applicable; and

3-18 (7) the young adult's attorney ad litem, guardian ad
 3-19 litem, and volunteer advocate, the appointment of whom has not been
 3-20 previously dismissed by the court.

3-21 (e) If, after reviewing the young adult's plan of service
 3-22 and court report provided under Subsection (c), and any additional
 3-23 testimony and evidence presented at the review hearing, the court
 3-24 determines that the young adult is entitled to additional services
 3-25 under the department's rules or policies, or under a contract with a
 3-26 service provider, the court may order the department to take
 3-27 appropriate action to ensure that the young adult receives the
 3-28 additional services to which the young adult is entitled.

3-29 (f) A court with extended jurisdiction over a young adult as
 3-30 described in Subsection (a) shall continue to have jurisdiction
 3-31 over the young adult and shall retain the case on the court's docket
 3-32 until the earlier of:

3-33 (1) six months from the month in which the young adult
 3-34 leaves foster care, or up to 12 months from the month in which the
 3-35 young adult leaves foster care if so specified in a court order, for
 3-36 the purpose of allowing the young adult to pursue a trial
 3-37 independence period; or

3-38 (2) the young adult's 21st birthday.

3-39 (g) A court with extended jurisdiction as described in this
 3-40 section is not required to conduct periodic hearings for a young
 3-41 adult during a trial independence period and may not compel a young
 3-42 adult who has exited foster care to attend a court hearing ~~may, at~~
 3-43 ~~the young adult's request, render an order that extends the court's~~
 3-44 ~~jurisdiction over the young adult as provided by this subchapter.~~

3-45 ~~[(b) The extended jurisdiction of the court terminates on~~
 3-46 ~~the earlier of:~~

3-47 ~~[(1) the young adult's 21st birthday; or~~

3-48 ~~[(2) the date the young adult withdraws consent to the~~
 3-49 ~~extension of the court's jurisdiction in writing or in court].~~

3-50 SECTION 6. Subchapter G, Chapter 263, Family Code, is
 3-51 amended by adding Section 263.6021 to read as follows:

3-52 Sec. 263.6021. VOLUNTARY EXTENDED JURISDICTION FOR YOUNG
 3-53 ADULT RECEIVING TRANSITIONAL LIVING SERVICES.

3-54 (a) Notwithstanding Section 263.602, a court that had
 3-55 jurisdiction over a young adult on the day before the young adult's
 3-56 18th birthday may, at the young adult's request, render an order
 3-57 that extends the court's jurisdiction beyond the end of a trial
 3-58 independence period if the young adult is receiving transitional
 3-59 living services from the department.

3-60 (b) The extended jurisdiction of the court under this
 3-61 section terminates on the earlier of:

3-62 (1) the young adult's 21st birthday; or

3-63 (2) the date the young adult withdraws consent to the
 3-64 extension of the court's jurisdiction in writing or in court.

3-65 (c) At the request of a young adult who is receiving
 3-66 transitional living services from the department and who consents
 3-67 to voluntary extension of the court's jurisdiction under this
 3-68 section, the court may hold a hearing to review the services the
 3-69 young adult is receiving.

4-1 (d) Before a review hearing scheduled under this section,
4-2 the department must provide the court with a court report
4-3 summarizing the young adult's transitional living services plan,
4-4 services being provided to the young adult under that plan, and the
4-5 young adult's progress in achieving independence.

4-6 (e) If, after reviewing the court report and any additional
4-7 testimony and evidence presented at the hearing, the court
4-8 determines that the young adult is entitled to additional services
4-9 under the department's rules or policies, or under a contract with a
4-10 service provider, the court may order the department to take
4-11 appropriate action to ensure that the young adult receives the
4-12 additional services to which the young adult is entitled.

4-13 SECTION 7. Subsections (a) and (c), Section 263.603, Family
4-14 Code, are amended to read as follows:

4-15 (a) Notwithstanding Section 263.6021 [~~263.602~~], if the
4-16 court believes that a young adult may be incapacitated as defined by
4-17 Section 601(14)(B), Texas Probate Code, the court may extend its
4-18 jurisdiction on its own motion without the young adult's consent to
4-19 allow the department to refer the young adult to the Department of
4-20 Aging and Disability Services for guardianship services as required
4-21 by Section 48.209, Human Resources Code.

4-22 (c) If the Department of Aging and Disability Services
4-23 determines a guardianship is not appropriate, or the court with
4-24 probate jurisdiction denies the application to appoint a guardian,
4-25 the court under Subsection (a) may continue to extend its
4-26 jurisdiction over the young adult only as provided by Section
4-27 263.602 or 263.6021.

4-28 SECTION 8. Section 263.609, Family Code, is repealed.

4-29 SECTION 9. The changes in law made by this Act to Sections
4-30 263.401 and 263.403, Family Code, apply to a suit affecting the
4-31 parent-child relationship regardless of when filed.

4-32 SECTION 10. This Act takes effect immediately if it
4-33 receives a vote of two-thirds of all the members elected to each
4-34 house, as provided by Section 39, Article III, Texas Constitution.
4-35 If this Act does not receive the vote necessary for immediate
4-36 effect, this Act takes effect September 1, 2011.

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