

BILL ANALYSIS

C.S.H.B. 3108
By: Giddings
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that there is insufficient clarity and consistency regarding the requirements affecting the various ways in which the state may remove a child from the child's parent or caregiver. C.S.H.B. 3108 seeks to address these discrepancies by revising the procedures by which the state may take possession of a child.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3108 amends the Family Code to remove the requirement that a person taking a child into possession without a court order in an emergency to protect the child's health and safety request a court to appoint an attorney ad litem for the child. The bill requires an original suit affecting the parent-child relationship filed by a governmental entity after taking possession of a child under such circumstances to be supported by an affidavit stating facts sufficient to satisfy a person of ordinary prudence and caution that, based on the affiant's personal knowledge or on information furnished by another person corroborated by the affiant's personal knowledge, at the time the child was taken into possession there was an immediate danger to the physical health or safety of the child, the child was the victim of sexual abuse or of trafficking, the parent or person who had possession of the child was using a controlled substance and the use constituted an immediate danger to the physical health or safety of the child, or the parent or person who had possession of the child permitted the child to remain on premises used for the manufacture of methamphetamine and that, based on the affiant's personal knowledge, continuation of the child in the home would have been contrary to the child's welfare, there was no time consistent with the physical health or safety of the child for a full adversary hearing, and reasonable efforts consistent with the circumstances and providing for the safety of the child were made to prevent or eliminate the need for the removal of the child. The bill includes among the conditions under which a court is exempt from the requirement to order the return of a child at the initial hearing of such a suit the condition that the court is satisfied that the evidence shows that the other requisite conditions are met and that the parent or person who has possession of the child is currently using a controlled substance and the use constitutes an immediate danger to the physical health or safety of the child or that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine.

C.S.H.B. 3108 repeals provisions relating to a hearing in a suit filed by a governmental entity

requesting possession of a child who has not yet been taken into possession and instead applies to such a suit the procedures for a full adversary hearing regarding a child who has already been taken into possession, with certain exceptions. The bill sets a deadline for holding a full adversary hearing in a suit filed by a governmental entity requesting possession of a child as not later than the 30th day after the date the suit is filed, retains the authority of a court in such a suit to render a temporary restraining order for the safety and welfare of the child, and sets out the conditions under which a court is excepted from the requirement to place a child removed from the child's custodial parent with the child's noncustodial parent.

C.S.H.B. 3108 repeals Section 262.205, Family Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3108 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 7.029(a), Education Code, is amended to read as follows:

(a) The agency and the Department of Family and Protective Services shall enter into a memorandum of understanding regarding the exchange of information as appropriate to facilitate the department's evaluation of educational outcomes of students in foster care. The memorandum of understanding must require:

(1) the department to provide the agency each year with demographic information regarding individual students who during the preceding school year were in the conservatorship of the department following a show cause ~~[an adversarial]~~ hearing under Section 262.201, Family Code; and

(2) the agency, in a manner consistent with federal law, to provide the department with aggregate information regarding educational outcomes of students for whom the agency received demographic information under Subdivision (1).

SECTION 2. Section 29.153(b), Education Code, is amended to read as follows:

(b) A child is eligible for enrollment in a prekindergarten class under this section if the child is at least three years of age and:

(1) is unable to speak and comprehend the English language;

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

No equivalent provision.

- (2) is educationally disadvantaged;
- (3) is a homeless child, as defined by 42 U.S.C. Section 11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child;
- (4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;
- (5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or
- (6) is or ever has been in the conservatorship of the Department of Family and Protective Services following a show cause [~~an adversary~~] hearing held as provided by Section 262.201, Family Code.

SECTION 3. Section 61.0909(b), Education Code, is amended to read as follows:

(b) The board and the department shall enter into a memorandum of understanding regarding the exchange of information as appropriate to facilitate the department's evaluation of educational outcomes of students at institutions of higher education who were formerly in the conservatorship of the department. The memorandum of understanding must require:

- (1) the department to provide the board each year with demographic information regarding individual students enrolled at institutions of higher education who were formerly in the conservatorship of the department following a show cause [~~an adversary~~] hearing under Section 262.201, Family Code; and
- (2) the board, in a manner consistent with federal law, to provide the department with aggregate information regarding educational outcomes of students for whom the board received demographic information under Subdivision (1).

SECTION 4. Section 105.001(h), Family Code, is amended to read as follows:

(h) An order under Subsection (a)(1) may be rendered without notice and a show cause [~~an adversary~~] hearing if the order is an emergency order sought by a governmental entity under Chapter 262.

No equivalent provision.

No equivalent provision.

SECTION 5. Section 107.011(a), Family Code, is amended to read as follows:

(a) Except as otherwise provided by this subchapter, in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child, the court shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the show cause [~~full adversary~~] hearing.

No equivalent provision.

SECTION 6. Section 107.012, Family Code, is amended to read as follows:

Sec. 107.012. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR CHILD. In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the show cause [~~full adversary~~] hearing, to ensure adequate representation of the child.

No equivalent provision.

SECTION 7. Sections 107.0141(a) and (c), Family Code, are amended to read as follows:

(a) The court may appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at the time the court issues a temporary restraining order or attachment of the parent's child under Chapter 262 and ending on the court's determination of whether the parent is indigent before commencement of the show cause [~~full adversary~~] hearing.

(c) If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

(1) inform the parent of the parent's right to be represented by an attorney and of the parent's right to an attorney ad litem appointed by the court, if the parent is indigent and appears in opposition to the suit;

(2) if the parent claims indigence and requests an attorney ad litem beyond the period of the temporary appointment under this section, assist the parent in making a claim of indigence for the appointment of an attorney ad litem; and

(3) assist the parent in preparing for the show cause [~~full adversary~~] hearing

No equivalent provision.

under Subchapter C, Chapter 262.

SECTION 8. Section 262.011, Family Code, as added by Chapter 338 (H.B. 418), Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

Sec. 262.011. PLACEMENT IN SECURE AGENCY FOSTER HOME OR SECURE AGENCY FOSTER GROUP HOME. A court in an emergency, initial, or show cause [~~full-adversary~~] hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with Section 42.0531, Human Resources Code, if the court finds that:

- (1) the placement is in the best interest of the child; and
- (2) the child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Section 20A.02 or 20A.03, Penal Code.

SECTION 9. Section 262.101, Family Code, is amended to read as follows:

Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF CHILD. An original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

- (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;
- (2) [~~and that~~] continuation in the home would be contrary to the child's welfare;
- (3) [(2)] there is no time, consistent with the physical health or safety of the child, for a show cause [~~full-adversary~~] hearing under Subchapter C; and
- (4) [(3)] reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

No equivalent provision.

SECTION 1. Section 262.101, Family Code, is amended to read as follows:

Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF CHILD. An original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

- (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;
- (2) [~~and that~~] continuation in the home would be contrary to the child's welfare;
- (3) [(2)] there is no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C; and
- (4) [(3)] reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

SECTION 10. Sections 262.1015(b) and (d), Family Code, are amended to read as follows:

(b) A court may issue a temporary restraining order in a suit by the department for the removal of an alleged perpetrator under Subsection (a) if the department's petition states facts sufficient to satisfy the court that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse;

(2) there is no time, consistent with the physical health or safety of the child, for a show cause ~~[an adversary]~~ hearing;

(3) the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the residence of the child;

(4) the parent or other adult with whom the child will continue to reside in the child's home is likely to:

(A) make a reasonable effort to monitor the residence; and

(B) report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence; and

(5) the issuance of the order is in the best interest of the child.

(d) A temporary restraining order under this section expires not later than the 14th day after the date the order was rendered, unless the court grants an extension under Section 262.201(e) ~~[262.201(a-3)]~~.

SECTION 11. Section 262.102(a), Family Code, is amended to read as follows:

(a) Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section 105.001(a)(1) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;

(2) ~~[and that]~~ continuation in the home would be contrary to the child's welfare;

(3) ~~(2)~~ there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a show cause

SECTION 2. Section 262.1015(d), Family Code, is amended to read as follows:

(d) A temporary restraining order under this section expires not later than the 14th day after the date the order was rendered, unless the court grants an extension under Section 262.201(e) ~~[262.201(a-3)]~~.

SECTION 3. Section 262.102(a), Family Code, is amended to read as follows:

(a) Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section 105.001(a)(1) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;

(2) ~~[and that]~~ continuation in the home would be contrary to the child's welfare;

(3) ~~(2)~~ there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary

~~full adversary~~ hearing under Subchapter C; and

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

SECTION 12. Section 262.103, Family Code, is amended.

SECTION 13. Section 262.105, Family Code, is amended to read as follows:

Sec. 262.105. FILING PETITION AFTER TAKING POSSESSION OF CHILD IN EMERGENCY. (a) When a child is taken into possession without a court order, the person taking the child into possession, without unnecessary delay, shall:

(1) file a suit affecting the parent-child relationship; and

(2) ~~request the court to appoint an attorney ad litem for the child; and~~

~~(3)~~ request an initial hearing to be held by no later than the first business ~~working~~ day after the date the child is taken into possession.

(b) An original suit filed by a governmental entity after taking possession of a child under Section 262.104 must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

(1) one of the following circumstances existed at the time the child was taken into possession:

(A) there was an immediate danger to the physical health or safety of the child;

(B) the child was the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code;

(C) the parent or person who had possession of the child was using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constituted an immediate danger to the physical health or safety of the child; or

(D) the parent or person who had possession of the child permitted the child to remain on premises used for the manufacture of methamphetamine;

hearing under Subchapter C; and

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

SECTION 4. Same as introduced version.

SECTION 5. Section 262.105, Family Code, is amended to read as follows:

Sec. 262.105. FILING PETITION AFTER TAKING POSSESSION OF CHILD IN EMERGENCY. (a) When a child is taken into possession without a court order, the person taking the child into possession, without unnecessary delay, shall:

(1) file a suit affecting the parent-child relationship; and

(2) ~~request the court to appoint an attorney ad litem for the child; and~~

~~(3)~~ request an initial hearing to be held by no later than the first business ~~working~~ day after the date the child is taken into possession.

(b) An original suit filed by a governmental entity after taking possession of a child under Section 262.104 must be supported by an affidavit stating facts sufficient to satisfy a person of ordinary prudence and caution that:

(1) based on the affiant's personal knowledge or on information furnished by another person corroborated by the affiant's personal knowledge, one of the following circumstances existed at the time the child was taken into possession:

(A) there was an immediate danger to the physical health or safety of the child;

(B) the child was the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code;

(C) the parent or person who had possession of the child was using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constituted an immediate danger to the physical health or safety of the child; or

(D) the parent or person who had possession of the child permitted the child to remain on premises used for the manufacture of methamphetamine; and

(2) based on the affiant's personal

(2) continuation of the child in the home would have been contrary to the child's welfare;

(3) there was no time, consistent with the physical health or safety of the child, for a show cause hearing under Subchapter C; and

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

SECTION 14. Sections 262.106(a), (b), and (d), Family Code, are amended to read as follows:

(a) The court in which a suit has been filed after a child has been taken into possession without a court order by a governmental entity shall hold an initial hearing on or before the first business ~~[working]~~ day after the date the child is taken into possession. The court shall render orders that are necessary to protect the physical health and safety of the child. If the court is unavailable for a hearing on the first business ~~[working]~~ day, then, and only in that event, the hearing shall be held no later than the first business ~~[working]~~ day after the court becomes available, provided that the hearing is held no later than the third business ~~[working]~~ day after the child is taken into possession.

(b) The initial hearing may be ex parte and proof may be by sworn petition or affidavit if a show cause ~~[full adversary]~~ hearing is not practicable.

(d) For the purpose of determining under Subsection (a) the first business ~~[working]~~ day after the date the child is taken into possession, the child is considered to have been taken into possession by the Department of Family and Protective Services on the expiration of the five-day period permitted under Section 262.007(c) or 262.110(b), as appropriate.

SECTION 15. Section 262.107(a), Family Code, is amended to read as follows:

(a) The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that:

knowledge:

(A) continuation of the child in the home would have been contrary to the child's welfare;

(B) there was no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C; and

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

SECTION 6. Sections 262.106(a) and (d), Family Code, are amended to read as follows:

(a) The court in which a suit has been filed after a child has been taken into possession without a court order by a governmental entity shall hold an initial hearing on or before the first business ~~[working]~~ day after the date the child is taken into possession. The court shall render orders that are necessary to protect the physical health and safety of the child. If the court is unavailable for a hearing on the first business ~~[working]~~ day, then, and only in that event, the hearing shall be held no later than the first business ~~[working]~~ day after the court becomes available, provided that the hearing is held no later than the third business ~~[working]~~ day after the child is taken into possession.

(d) For the purpose of determining under Subsection (a) the first business ~~[working]~~ day after the date the child is taken into possession, the child is considered to have been taken into possession by the Department of Family and Protective Services on the expiration of the five-day period permitted under Section 262.007(c) or 262.110(b), as appropriate.

SECTION 7. Section 262.107(a), Family Code, is amended to read as follows:

(a) The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that:

(1) one of the following circumstances exists:

(A) there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;

or
(B) the evidence shows that:

(i) the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;

(ii) the parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child; or

(iii) the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine;

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

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

SECTION 16. Section 262.109(b), Family Code, is amended.

SECTION 17. Subchapter B, Chapter 262, Family Code, is amended.

SECTION 18. Sections 262.114(a), (a-1), and (a-2), Family Code, are amended to read as follows:

(a) Before a show cause ~~[full-adversary]~~ hearing under Subchapter C, the Department of Family and Protective Services must perform a background and criminal history check of the relatives or other designated individuals identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307. The department shall evaluate each person listed on the form to determine the relative or other designated

(1) the evidence shows that one of the following circumstances exists:

(A) there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;

(B) ~~[or the evidence shows that]~~ the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;

(C) the parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child; or

(D) the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine;

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

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

SECTION 8. Same as introduced version.

SECTION 9. Substantially same as introduced version.

No equivalent provision.

individual who would be the most appropriate substitute caregiver for the child and must complete a home study of the most appropriate substitute caregiver, if any, before the show cause [~~full-adversary~~] hearing. Until the department identifies a relative or other designated individual qualified to be a substitute caregiver, the department must continue to explore substitute caregiver options. The time frames in this subsection do not apply to a relative or other designated individual located in another state.

(a-1) At the show cause [~~full-adversary~~] hearing under Section 262.201, the department shall, after redacting any social security numbers, file with the court:

(1) a copy of each proposed child placement resources form completed by the parent or other person having legal custody of the child;

(2) a copy of any completed home study performed under Subsection (a); and

(3) the name of the relative or other designated caregiver, if any, with whom the child has been placed.

(a-2) If the child has not been placed with a relative or other designated caregiver by the time of the show cause [~~full-adversary~~] hearing under Section 262.201, the department shall file with the court a statement that explains:

(1) the reasons why the department has not placed the child with a relative or other designated caregiver listed on the proposed child placement resources form; and

(2) the actions the department is taking, if any, to place the child with a relative or other designated caregiver.

SECTION 19. The heading to Subchapter C, Chapter 262, Family Code, is amended to read as follows:

SUBCHAPTER C. SHOW CAUSE [~~ADVERSARY~~] HEARING

SECTION 20. Section 262.201, Family Code, is amended to read as follows:

Sec. 262.201. SHOW CAUSE [~~FULL ADVERSARY~~] HEARING; FINDINGS OF THE COURT.

(a) In a suit filed under Section 262.101 or 262.105, unless [~~Unless~~] the child has already been returned to the parent, managing conservator, possessory

No equivalent provision.

SECTION 10. Section 262.201, Family Code, is amended to read as follows:

Sec. 262.201. FULL ADVERSARY HEARING; FINDINGS OF THE COURT.

(a) In a suit filed under Section 262.101 or 262.105, unless [~~Unless~~] the child has already been returned to the parent, managing conservator, possessory

conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a show cause ~~[full adversary]~~ hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension under Subsection (e) ~~[(a-3)]~~.

(b) A show cause hearing in a suit filed under Section 262.113 requesting possession of a child shall be held not later than the 30th day after the date the suit is filed.

(c) ~~[(a-1)]~~ Before commencement of the show cause ~~[full adversary]~~ hearing, the court must inform each parent not represented by an attorney of:

- (1) the right to be represented by an attorney; and
- (2) if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

(d) ~~[(a-2)]~~ If a parent claims indigence and requests the appointment of an attorney before the show cause ~~[full adversary]~~ hearing, the court shall require the parent to complete and file with the court an affidavit of indigence. The court may consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the appointment of an attorney for the parent is requested, the court shall make a determination of indigence before commencement of the show cause ~~[full adversary]~~ hearing. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent.

(e) ~~[(a-3)]~~ The court may, for good cause shown, postpone the show cause ~~[full adversary]~~ hearing for not more than seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. The court may shorten or lengthen the extension granted under this subsection if the parent and the appointed attorney agree in writing. If the court postpones the show cause ~~[full adversary]~~ hearing,

conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension under Subsection (e) ~~[(a-3)]~~.

(b) A full adversary hearing in a suit filed under Section 262.113 requesting possession of a child shall be held not later than the 30th day after the date the suit is filed.

(c) ~~[(a-1)]~~ Before commencement of the full adversary hearing, the court must inform each parent not represented by an attorney of:

- (1) the right to be represented by an attorney; and
- (2) if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

(d) ~~[(a-2)]~~ If a parent claims indigence and requests the appointment of an attorney before the full adversary hearing, the court shall require the parent to complete and file with the court an affidavit of indigence. The court may consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the appointment of an attorney for the parent is requested, the court shall make a determination of indigence before commencement of the full adversary hearing. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent.

(e) ~~[(a-3)]~~ The court may, for good cause shown, postpone the full adversary hearing for not more than seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. The court may shorten or lengthen the extension granted under this subsection if the parent and the appointed attorney agree in writing. If the court postpones the full adversary hearing,

the court shall extend a temporary order, temporary restraining order, or attachment issued by the court under Section 262.102(a) for the protection of the child until the date of the rescheduled show cause ~~[full adversary]~~ hearing.

(f) ~~[(a-4)]~~ The court shall ask all parties present at the show cause ~~[full adversary]~~ hearing whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated.

(g) In a suit filed under Section 262.101 or 262.105, at ~~[(b)-At]~~ the conclusion of the show cause ~~[full adversary]~~ hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under Section 20A.02 or 20A.03, Penal Code, which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

(2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and

(3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

(h) In determining whether there is a continuing danger to the physical health or safety of the child under Subsection (g), the court may consider whether the household to which the child would be returned or in which the child would be allowed to remain includes a person who:

(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) has sexually abused another child.

(i) In a suit filed under Section 262.101 or 262.105, if ~~[(e)-If]~~ the court finds sufficient evidence to satisfy a person of ordinary

the court shall extend a temporary order, temporary restraining order, or attachment issued by the court under Section 262.102(a) or Section 262.1131 for the protection of the child until the date of the rescheduled full adversary hearing.

(f) ~~[(a-4)]~~ The court shall ask all parties present at the full adversary hearing whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated.

(g) In a suit filed under Section 262.101 or 262.105, at ~~[(b)-At]~~ the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under Section 20A.02 or 20A.03, Penal Code, which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

(2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and

(3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

(i) In determining whether there is a continuing danger to the physical health or safety of the child under Subsection (g), the court may consider whether the household to which the child would be returned includes a person who:

(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) has sexually abused another child.

(h) In a suit filed under Section 262.101 or 262.105, if ~~[(e)-If]~~ the court finds sufficient evidence to satisfy a person of ordinary

prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall issue an appropriate temporary order under Chapter 105.

(j) In a suit filed under Section 262.113, at the conclusion of the show cause hearing, the court may grant the request to remove the child from the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession of the child

if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) continuation of the child in the home would be contrary to the child's welfare; and
(2) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

(k) If the court finds that the child requires protection from family violence, as that term is defined by Section 71.004, by a member of the child's family or household, the court shall render a protective order for the child under Title 4.

(l) The court shall require each parent, alleged father, or relative of the child before the court to complete the proposed child placement resources form provided under Section 261.307 and file the form with the court, if the form has not been previously filed with the court, and provide the Department of Family and Protective Services with information necessary to locate any other absent parent, alleged father, or relative of the child. The court shall inform each parent, alleged father, or relative of the child before the court that the person's failure to submit the proposed child placement resources form will not delay any court proceedings relating to the child.

(m) The court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a

prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall issue an appropriate temporary order under Chapter 105.

(j) In a suit filed under Section 262.113, at the conclusion of the full adversary hearing, the court shall issue an appropriate temporary order under Chapter 105

if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person entitled to possession of the child and continuation of the child in the home would be contrary to the child's welfare; and
(2) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

(k) If the court finds that the child requires protection from family violence, as that term is defined by Section 71.004, by a member of the child's family or household, the court shall render a protective order for the child under Title 4.

(l) The court shall require each parent, alleged father, or relative of the child before the court to complete the proposed child placement resources form provided under Section 261.307 and file the form with the court, if the form has not been previously filed with the court, and provide the Department of Family and Protective Services with information necessary to locate any other absent parent, alleged father, or relative of the child. The court shall inform each parent, alleged father, or relative of the child before the court that the person's failure to submit the proposed child placement resources form will not delay any court proceedings relating to the child.

(m) The court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a

safe environment. ~~[If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order under Title 4 for the child. In this subsection, "family violence" has the meaning assigned by Section 71.004.~~

~~[(d) In determining whether there is a continuing danger to the physical health or safety of the child, the court may consider whether the household to which the child would be returned includes a person who:~~

~~[(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or~~

~~[(2) has sexually abused another child.]~~

~~[(n) [(e)] The court shall place a child removed from the child's custodial parent with the child's noncustodial parent or with a relative of the child if placement with the noncustodial parent is inappropriate, unless placement with the noncustodial parent or a relative is not in the best interest of the child.~~

~~[(o) [(f)] When citation by publication is needed for a parent or alleged or probable father in an action brought under this chapter because the location of the parent, alleged father, or probable father is unknown, the court may render a temporary order without delay at any time after the filing of the action without regard to whether notice of the citation by publication has been published.~~

~~[(p) [(g)] For the purpose of determining under Subsection (a) the 14th day after the date the child is taken into possession, a child is considered to have been taken into possession by the Department of Family and~~

safe environment. ~~[If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order under Title 4 for the child. In this subsection, "family violence" has the meaning assigned by Section 71.004.~~

~~[(d) In determining whether there is a continuing danger to the physical health or safety of the child, the court may consider whether the household to which the child would be returned includes a person who:~~

~~[(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or~~

~~[(2) has sexually abused another child.]~~

~~[(n) [(e)] The court shall place a child removed from the child's custodial parent with the child's noncustodial parent unless the court finds that:~~

~~[(1) there is a danger to the physical health or safety of the child caused by an act or failure to act of the child's noncustodial parent and placement of the child with the child's noncustodial parent would be contrary to the child's welfare;~~

~~[(2) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to place the child with the child's noncustodial parent; and~~

~~[(3) it is not in the best interest of the child to be placed with the child's noncustodial parent.~~

~~[(o) If [or with a relative of the child if] placement with the noncustodial parent is inappropriate, the court shall place a child removed from the child's custodial parent with a relative of the child unless placement with [the noncustodial parent or] a relative is not in the best interest of the child.~~

~~[(p) [(f)] When citation by publication is needed for a parent or alleged or probable father in an action brought under this chapter because the location of the parent, alleged father, or probable father is unknown, the court may render a temporary order without delay at any time after the filing of the action without regard to whether notice of the citation by publication has been published.~~

~~[(q) [(g)] For the purpose of determining under Subsection (a) the 14th day after the date the child is taken into possession, a child is considered to have been taken into possession by the Department of Family and~~

Protective Services on the expiration of the five-day period permitted under Section 262.007(c) or 262.110(b), as appropriate.

Protective Services on the expiration of the five-day period permitted under Section 262.007(c) or 262.110(b), as appropriate.

SECTION 21. Section 262.202, Family Code, is amended to read as follows:
Sec. 262.202. IDENTIFICATION OF COURT OF CONTINUING, EXCLUSIVE JURISDICTION. If at the conclusion of the show cause [~~full adversary~~] hearing the court renders a temporary order, the governmental entity shall request identification of a court of continuing, exclusive jurisdiction as provided by Chapter 155.

No equivalent provision.

SECTION 22. Section 263.0021(c), Family Code, is amended to read as follows:
(c) Notice of a hearing under this chapter may be given:
(1) as provided by Rule 21a, Texas Rules of Civil Procedure;
(2) in a temporary order following a show cause [~~full adversary~~] hearing;
(3) in an order following a hearing under this chapter;
(4) in open court; or
(5) in any manner that would provide actual notice to a person entitled to notice.

No equivalent provision.

SECTION 23. Section 263.004(b), Family Code, is amended to read as follows:
(b) Not later than the fifth day after the date a show cause [~~an adversary~~] hearing under Section 262.201 [~~or 262.205~~] is concluded, the information required by Subsection (a) shall be filed with the court and a copy shall be provided to the school the child attends.

No equivalent provision.

SECTION 24. Section 262.205, Family Code, is repealed.

SECTION 11. Same as introduced version.

SECTION 25. The changes in law made by this Act apply only to a suit affecting the parent-child relationship that is filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect on the date the suit is filed, and the former law is continued in effect for that purpose.

SECTION 12. Same as introduced version.

SECTION 26. This Act takes effect September 1, 2017.

SECTION 13. Same as introduced version.