

By: Giddings

H.B. No. 3108

Substitute the following for H.B. No. 3108:

By: Frank

C.S.H.B. No. 3108

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures for taking possession of a child and for
3 certain hearings in a suit affecting the parent-child relationship
4 involving the Department of Family and Protective Services.

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

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

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

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

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

19 (3) [~~(2)~~] there is no time, consistent with the
20 physical health or safety of the child, for a full adversary hearing
21 under Subchapter C; and

22 (4) [~~(3)~~] reasonable efforts, consistent with the
23 circumstances and providing for the safety of the child, were made
24 to prevent or eliminate the need for the removal of the child.

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

3 (d) A temporary restraining order under this section
4 expires not later than the 14th day after the date the order was
5 rendered, unless the court grants an extension under Section
6 262.201(e) [~~262.201(a-3)~~].

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

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

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

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

20 (3) [~~(2)~~] there is no time, consistent with the
21 physical health or safety of the child and the nature of the
22 emergency, for a full adversary hearing under Subchapter C; and

23 (4) [~~(3)~~] reasonable efforts, consistent with the
24 circumstances and providing for the safety of the child, were made
25 to prevent or eliminate the need for removal of the child.

26 SECTION 4. Section 262.103, Family Code, is amended to read
27 as follows:

1 Sec. 262.103. DURATION OF TEMPORARY ORDER, TEMPORARY
2 RESTRAINING ORDER, AND ATTACHMENT. A temporary order, temporary
3 restraining order, or attachment of the child issued under Section
4 262.102(a) expires not later than 14 days after the date it is
5 issued unless it is extended as provided by the Texas Rules of Civil
6 Procedure or Section 262.201(e) [~~262.201(a-3)~~].

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

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

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

15 (2) [~~request the court to appoint an attorney ad litem~~
16 ~~for the child, and~~

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

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

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

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

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

5 (C) the parent or person who had possession of
6 the child was using a controlled substance as defined by Chapter
7 481, Health and Safety Code, and the use constituted an immediate
8 danger to the physical health or safety of the child; or

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

12 (2) based on the affiant's personal knowledge:

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

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

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

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

23 (a) The court in which a suit has been filed after a child
24 has been taken into possession without a court order by a
25 governmental entity shall hold an initial hearing on or before the
26 first business [~~working~~] day after the date the child is taken into
27 possession. The court shall render orders that are necessary to

1 protect the physical health and safety of the child. If the court
2 is unavailable for a hearing on the first business [~~working~~] day,
3 then, and only in that event, the hearing shall be held no later
4 than the first business [~~working~~] day after the court becomes
5 available, provided that the hearing is held no later than the third
6 business [~~working~~] day after the child is taken into possession.

7 (d) For the purpose of determining under Subsection (a) the
8 first business [~~working~~] day after the date the child is taken into
9 possession, the child is considered to have been taken into
10 possession by the Department of Family and Protective Services on
11 the expiration of the five-day period permitted under Section
12 [262.007\(c\)](#) or [262.110\(b\)](#), as appropriate.

13 SECTION 7. Section [262.107\(a\)](#), Family Code, is amended to
14 read as follows:

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

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

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

26 (B) [~~or the evidence shows that~~] the child has
27 been the victim of sexual abuse or of trafficking under Section

1 20A.02 or 20A.03, Penal Code, on one or more occasions and that
2 there is a substantial risk that the child will be the victim of
3 sexual abuse or of trafficking in the future;

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

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

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

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

16 SECTION 8. Section 262.109(b), Family Code, is amended to
17 read as follows:

18 (b) The written notice must be given as soon as practicable,
19 but in any event not later than the first business [~~working~~] day
20 after the date the child is taken into possession.

21 SECTION 9. Subchapter B, Chapter 262, Family Code, is
22 amended by adding Section 262.1131 to read as follows:

23 Sec. 262.1131. TEMPORARY RESTRAINING ORDER BEFORE FULL
24 ADVERSARY HEARING. In a suit filed under Section 262.113, the court
25 may render a temporary restraining order as provided by Section
26 105.001.

27 SECTION 10. Section 262.201, Family Code, is amended to

1 read as follows:

2 Sec. 262.201. FULL ADVERSARY HEARING; FINDINGS OF THE
3 COURT. (a) In a suit filed under Section 262.101 or 262.105,
4 unless [~~Unless~~] the child has already been returned to the parent,
5 managing conservator, possessory conservator, guardian, caretaker,
6 or custodian entitled to possession and the temporary order, if
7 any, has been dissolved, a full adversary hearing shall be held not
8 later than the 14th day after the date the child was taken into
9 possession by the governmental entity, unless the court grants an
10 extension under Subsection (e) [~~(a-3)~~].

11 (b) A full adversary hearing in a suit filed under Section
12 262.113 requesting possession of a child shall be held not later
13 than the 30th day after the date the suit is filed.

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

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

20 (d) [~~(a-2)~~] If a parent claims indigence and requests the
21 appointment of an attorney before the full adversary hearing, the
22 court shall require the parent to complete and file with the court
23 an affidavit of indigence. The court may consider additional
24 evidence to determine whether the parent is indigent, including
25 evidence relating to the parent's income, source of income, assets,
26 property ownership, benefits paid in accordance with a federal,
27 state, or local public assistance program, outstanding

1 obligations, and necessary expenses and the number and ages of the
2 parent's dependents. If the appointment of an attorney for the
3 parent is requested, the court shall make a determination of
4 indigence before commencement of the full adversary hearing. If
5 the court determines the parent is indigent, the court shall
6 appoint an attorney to represent the parent.

7 (e) [~~(a-3)~~] The court may, for good cause shown, postpone
8 the full adversary hearing for not more than seven days from the
9 date of the attorney's appointment to provide the attorney time to
10 respond to the petition and prepare for the hearing. The court may
11 shorten or lengthen the extension granted under this subsection if
12 the parent and the appointed attorney agree in writing. If the
13 court postpones the full adversary hearing, the court shall extend
14 a temporary order, temporary restraining order, or attachment
15 issued by the court under Section [262.102\(a\)](#) or Section 262.1131
16 for the protection of the child until the date of the rescheduled
17 full adversary hearing.

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

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

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

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

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

14 (h) In a suit filed under Section [262.101](#) or [262.105](#), if
15 ~~[(c) — If]~~ the court finds sufficient evidence to satisfy a person
16 of ordinary prudence and caution that there is a continuing danger
17 to the physical health or safety of the child and for the child to
18 remain in the home is contrary to the welfare of the child, the
19 court shall issue an appropriate temporary order under Chapter [105](#).

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

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

26 (2) has sexually abused another child.

27 (j) In a suit filed under Section [262.113](#), at the conclusion

1 of the full adversary hearing, the court shall issue an appropriate
2 temporary order under Chapter 105 if the court finds sufficient
3 evidence to satisfy a person of ordinary prudence and caution that:

4 (1) there is a continuing danger to the physical
5 health or safety of the child caused by an act or failure to act of
6 the person entitled to possession of the child and continuation of
7 the child in the home would be contrary to the child's welfare; and

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

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

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

26 (m) The court shall inform each parent in open court that
27 parental and custodial rights and duties may be subject to

1 restriction or to termination unless the parent or parents are
2 willing and able to provide the child with a safe environment. [~~If~~
3 ~~the court finds that the child requires protection from family~~
4 ~~violence by a member of the child's family or household, the court~~
5 ~~shall render a protective order under Title 4 for the child. In~~
6 ~~this subsection, "family violence" has the meaning assigned by~~
7 ~~Section 71.004.~~

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

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

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

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

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

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

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

27 (o) If [~~or with a relative of the child if~~] placement with

1 the noncustodial parent is inappropriate, the court shall place a
2 child removed from the child's custodial parent with a relative of
3 the child unless placement with [~~the noncustodial parent or~~] a
4 relative is not in the best interest of the child.

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

12 (q) [~~(g)~~] For the purpose of determining under Subsection
13 (a) the 14th day after the date the child is taken into possession,
14 a child is considered to have been taken into possession by the
15 Department of Family and Protective Services on the expiration of
16 the five-day period permitted under Section 262.007(c) or
17 262.110(b), as appropriate.

18 SECTION 11. Section 262.205, Family Code, is repealed.

19 SECTION 12. The changes in law made by this Act apply only
20 to a suit affecting the parent-child relationship that is filed on
21 or after the effective date of this Act. A suit filed before the
22 effective date of this Act is governed by the law in effect on the
23 date the suit is filed, and the former law is continued in effect
24 for that purpose.

25 SECTION 13. This Act takes effect September 1, 2017.