

By: Burrows

H.B. No. 3297

A BILL TO BE ENTITLED

AN ACT

relating to certain suits affecting the parent-child relationship.

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

SECTION 1. Section 105.002, Family Code, is amended by adding Subsection (d) to read as follows:

(d) In a suit affecting the parent-child relationship in which the Department of Family and Protective Services seeks termination of the parent-child relationship, the court may not issue broad-form questions to the jury on the issue of whether to terminate the parent-child relationship. The court shall instruct the jury to find from the evidence whether the grounds for termination of the parent-child relationship alleged in the petition are true. If the petition alleges more than one ground for termination, the jury shall indicate in the verdict which grounds are sustained by the evidence and which are not sustained. To the extent that this subsection conflicts with the Texas Rules of Civil Procedure, this subsection controls. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subsection.

SECTION 2. Section 154.001, Family Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) In a suit filed by the Department of Family and Protective Services to be named managing conservator of a child,

1 the court may not order a parent of the child to make periodic
2 payments for the support of the child while the suit is pending,
3 except as provided by this section. [~~The court may order either or~~
4 ~~both parents to make periodic payments for the support of a child in~~
5 ~~a proceeding in which the Department of Protective and Regulatory~~
6 ~~Services is named temporary managing conservator.]~~

7 **(b-1)** In a proceeding in which a court renders a final order
8 appointing the Department of Family and Protective [~~and Regulatory~~]
9 Services as [~~is named permanent~~] managing conservator of a child
10 whose parents' rights have not been terminated, the court shall
11 order each parent that is financially able to make periodic
12 payments for the support of the child.

13 SECTION 3. Section 161.001, Family Code, is amended by
14 adding Subsection (c) to read as follows:

15 **(c)** A court may not make a finding under Subsection (b) and
16 order termination of the parent-child relationship based solely on
17 evidence that the parent:

- 18 **(1)** homeschooled the child;
19 **(2)** declined immunization for the child for reasons of
20 conscience, including a religious belief;
21 **(3)** engaged in reasonable discipline of the child; or
22 **(4)** has been charged with a misdemeanor offense other
23 than:

- 24 **(A)** an offense under Title 5, Penal Code;
25 **(B)** an offense under Title 6, Penal Code; or
26 **(C)** an offense that involves family violence, as
27 defined by Section 71.004 of this code.

1 SECTION 4. Subchapter B, Chapter 161, Family Code, is
2 amended by adding Section 161.1011 to read as follows:

3 Sec. 161.1011. FILING REQUIREMENT FOR PETITION RELATING TO
4 MORE THAN ONE CHILD. (a) Before filing a petition for the
5 termination of the parent-child relationship relating to more than
6 one child, the Department of Family and Protective Services must
7 determine whether any court has continuing, exclusive jurisdiction
8 of a child named in the petition. If a court is determined to have
9 continuing, exclusive jurisdiction of a child named in the
10 petition, the department shall file the petition in that court.

11 (b) If more than one court has continuing, exclusive
12 jurisdiction of a child named in the petition, the department shall
13 file the petition in the court that has most recently exercised
14 continuing, exclusive jurisdiction of a child named in the
15 petition.

16 SECTION 5. Section 161.206, Family Code, is amended by
17 adding Subsection (a-1) to read as follows:

18 (a-1) In a suit filed by the Department of Family and
19 Protective Services seeking termination of the parent-child
20 relationship for both parents of the child, the court may order
21 termination of the parent-child relationship for both parents only
22 if the court finds by clear and convincing evidence grounds for the
23 termination of the parent-child relationship for each parent. An
24 order rendered under this subsection must state the grounds for
25 terminating the parent-child relationship for each parent.

26 SECTION 6. Subchapter B, Chapter 262, Family Code, is
27 amended by adding Section 262.116 to read as follows:

1 Sec. 262.116. LIMITS ON REMOVAL. (a) The Department of
2 Family and Protective Services may not take possession of a child
3 under this subchapter based solely on evidence that the parent:

4 (1) homeschooled the child;

5 (2) declined immunization for the child for reasons of
6 conscience, including a religious belief;

7 (3) engaged in reasonable discipline of the child; or

8 (4) has been charged with a misdemeanor offense other
9 than:

10 (A) an offense under Title 5, Penal Code;

11 (B) an offense under Title 6, Penal Code; or

12 (C) an offense that involves family violence, as
13 defined by Section 71.004 of this code.

14 (b) The department shall train child protective services
15 caseworkers regarding the prohibitions on removal provided under
16 Subsection (a).

17 (c) The executive commissioner of the Health and Human
18 Services Commission may adopt rules to implement this section.

19 SECTION 7. Section 262.101, Family Code, is amended to read
20 as follows:

21 Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF
22 CHILD. An original suit filed by a governmental entity that
23 requests permission to take possession of a child without prior
24 notice and a hearing must be supported by an affidavit sworn to by a
25 person with personal knowledge and stating facts sufficient to
26 produce in the mind of a reasonable person a firm belief or
27 conviction [~~satisfy a person of ordinary prudence and caution~~]

1 that:

2 (1) there is an immediate danger to the physical
3 health or safety of the child [~~or the child has been a victim of~~
4 ~~neglect or sexual abuse~~] and that continuation in the home would be
5 contrary to the child's welfare;

6 (2) there is no time, consistent with the physical
7 health or safety of the child, for a full adversary hearing under
8 Subchapter C; and

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

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

14 (a) Before a court may, without prior notice and a hearing,
15 issue a temporary order for the conservatorship of a child under
16 Section 105.001(a)(1) or a temporary restraining order or
17 attachment of a child authorizing a governmental entity to take
18 possession of a child in a suit brought by a governmental entity,
19 the court must find the evidence is sufficient to produce in the
20 mind of a reasonable person a firm belief or conviction that:

21 (1) there is an immediate danger to the physical
22 health or safety of the child [~~or the child has been a victim of~~
23 ~~neglect or sexual abuse~~] and that continuation in the home would be
24 contrary to the child's welfare;

25 (2) there is no time, consistent with the physical
26 health or safety of the child and the nature of the emergency, for a
27 full adversary hearing under Subchapter C; and

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

4 SECTION 9. Section 262.104, Family Code, is amended to read
5 as follows:

6 Sec. 262.104. TAKING POSSESSION OF A CHILD IN EMERGENCY
7 WITHOUT A COURT ORDER. (a) If there is no time to obtain a
8 temporary order, temporary restraining order, or attachment under
9 Section 262.102(a) before taking possession of a child consistent
10 with the health and safety of that child, an authorized
11 representative of the Department of Family and Protective Services,
12 a law enforcement officer, or a juvenile probation officer may take
13 possession of a child without a court order under the following
14 conditions, only:

15 (1) on personal knowledge of facts that would produce
16 in the mind of a reasonable person a firm belief or conviction [~~lead~~
17 ~~a person of ordinary prudence and caution to believe~~] that there is
18 an immediate danger to the physical health or safety of the child;

19 (2) on information furnished by another that has been
20 corroborated by personal knowledge of facts and all of which taken
21 together would produce in the mind of a reasonable person a firm
22 belief or conviction [~~lead a person of ordinary prudence and~~
23 ~~caution to believe~~] that there is an immediate danger to the
24 physical health or safety of the child;

25 (3) on personal knowledge of facts that would produce
26 in the mind of a reasonable person a firm belief or conviction [~~lead~~
27 ~~a person of ordinary prudence and caution to believe~~] that the child

1 has been the victim of sexual abuse or of trafficking under Section
2 20A.02 or 20A.03, Penal Code;

3 (4) on information furnished by another that has been
4 corroborated by personal knowledge of facts and all of which taken
5 together would produce in the mind of a reasonable person a firm
6 belief or conviction [~~lead a person of ordinary prudence and~~
7 ~~caution to believe~~] that the child has been the victim of sexual
8 abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code;
9 or

10 (5) on information furnished by another that has been
11 corroborated by personal knowledge of facts and all of which taken
12 together would produce in the mind of a reasonable person a firm
13 belief or conviction [~~lead a person of ordinary prudence and~~
14 ~~caution to believe~~] that the parent or person who has possession of
15 the child is currently using a controlled substance as defined by
16 Chapter 481, Health and Safety Code, and the use constitutes an
17 immediate danger to the physical health or safety of the child.

18 (b) An authorized representative of the Department of
19 Family and Protective Services, a law enforcement officer, or a
20 juvenile probation officer may take possession of a child under
21 Subsection (a) on personal knowledge or information furnished by
22 another, that has been corroborated by personal knowledge, that
23 would produce in the mind of a reasonable person a firm belief or
24 conviction [~~lead a person of ordinary prudence and caution to~~
25 ~~believe~~] that the parent or person who has possession of the child
26 has permitted the child to remain on premises used for the
27 manufacture of methamphetamine.

1 SECTION 10. Section 262.107(a), Family Code, is amended to
2 read as follows:

3 (a) The court shall order the return of the child at the
4 initial hearing regarding a child taken in possession without a
5 court order by a governmental entity unless the court determines
6 based on clear and convincing evidence [~~is satisfied~~] that:

7 (1) there is a continuing danger to the physical
8 health or safety of the child if the child is returned to the
9 parent, managing conservator, possessory conservator, guardian,
10 caretaker, or custodian who is presently entitled to possession of
11 the child or the evidence shows that the child has been the victim
12 of sexual abuse or of trafficking under Section 20A.02 or 20A.03,
13 Penal Code, on one or more occasions and that there is a substantial
14 risk that the child will be the victim of sexual abuse or of
15 trafficking in the future;

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

18 (3) 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 removal of the child.

21 SECTION 11. Section 262.113, Family Code, is amended to
22 read as follows:

23 Sec. 262.113. FILING SUIT WITHOUT TAKING POSSESSION OF
24 CHILD. An original suit filed by a governmental entity that
25 requests to take possession of a child after notice and a hearing
26 must be supported by an affidavit sworn to by a person with personal
27 knowledge and stating facts sufficient to produce in the mind of a

1 reasonable person a firm belief or conviction [~~satisfy a person of~~
2 ~~ordinary prudence and caution~~] that:

3 (1) the child has been a victim of neglect or abuse;

4 (2) reasonable efforts have been made to prevent or
5 eliminate the need to remove the child from the child's home; and

6 (3) [~~(2)~~] allowing the child to remain in the home
7 would be contrary to the child's welfare.

8 SECTION 12. Section 262.201, Family Code, is amended by
9 adding Subsection (a-5) and amending Subsections (b) and (c) to
10 read as follows:

11 (a-5) If a parent who is not indigent appears in opposition
12 to the suit, the court may, for good cause shown, postpone the full
13 adversary hearing for not more than seven days from the date of the
14 parent's appearance to allow the parent to hire an attorney or to
15 provide the parent's attorney time to respond to the petition and
16 prepare for the hearing. A postponement under this subsection is
17 subject to the limits and requirements prescribed by Subsection
18 (a-3).

19 (b) At the conclusion of the full adversary hearing, the
20 court shall order the return of the child to the parent, managing
21 conservator, possessory conservator, guardian, caretaker, or
22 custodian entitled to possession unless the court finds sufficient
23 evidence to produce in the mind of a reasonable person a firm belief
24 or conviction [~~satisfy a person of ordinary prudence and caution~~]
25 that:

26 (1) there was a danger to the physical health or safety
27 of the child, including a danger that the child would be a victim of

1 trafficking under Section 20A.02 or 20A.03, Penal Code, which was
2 caused by an act or failure to act of the person entitled to
3 possession and for the child to remain in the home is contrary to
4 the welfare of the child;

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

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

12 (c) If the court finds sufficient evidence to produce in the
13 mind of a reasonable person a firm belief or conviction [~~satisfy a~~
14 ~~person of ordinary prudence and caution~~] that there is a continuing
15 danger to the physical health or safety of the child and for the
16 child to remain in the home is contrary to the welfare of the child,
17 the court shall issue an appropriate temporary order under Chapter
18 105. The court shall require each parent, alleged father, or
19 relative of the child before the court to complete the proposed
20 child placement resources form provided under Section 261.307 and
21 file the form with the court, if the form has not been previously
22 filed with the court, and provide the Department of Family and
23 Protective Services with information necessary to locate any other
24 absent parent, alleged father, or relative of the child. The court
25 shall inform each parent, alleged father, or relative of the child
26 before the court that the person's failure to submit the proposed
27 child placement resources form will not delay any court proceedings

1 relating to the child. The court shall inform each parent in open
2 court that parental and custodial rights and duties may be subject
3 to restriction or to termination unless the parent or parents are
4 willing and able to provide the child with a safe environment. If
5 the court finds that the child requires protection from family
6 violence by a member of the child's family or household, the court
7 shall render a protective order under Title 4 for the child. In
8 this subsection, "family violence" has the meaning assigned by
9 Section 71.004.

10 SECTION 13. Section 262.205(b), Family Code, is amended to
11 read as follows:

12 (b) After the hearing, the court may grant the request to
13 remove the child from the parent, managing conservator, possessory
14 conservator, guardian, caretaker, or custodian entitled to
15 possession of the child if the court finds sufficient evidence to
16 produce in the mind of a reasonable person a firm belief or
17 conviction [~~satisfy a person of ordinary prudence and caution~~]
18 that:

19 (1) reasonable efforts have been made to prevent or
20 eliminate the need to remove the child from the child's home; and

21 (2) allowing the child to remain in the home would be
22 contrary to the child's welfare.

23 SECTION 14. Subchapter C, Chapter 262, Family Code, is
24 amended by adding Section 262.206 to read as follows:

25 Sec. 262.206. EX PARTE HEARINGS PROHIBITED. Unless
26 otherwise authorized by law, a hearing held by a court in a suit
27 under this chapter may not be ex parte.

1 SECTION 15. Section 263.401, Family Code, is amended to
2 read as follows:

3 Sec. 263.401. DISMISSAL AFTER ONE YEAR; NEW TRIALS;
4 EXTENSION. (a) Unless the court has commenced the trial on the
5 merits or granted an extension under Subsection (b) or (b-1), on the
6 first Monday after the first anniversary of the date the court
7 rendered a temporary order appointing the department as temporary
8 managing conservator, the court's jurisdiction over [~~court shall~~
9 ~~dismiss~~] the suit affecting the parent-child relationship filed by
10 the department that requests termination of the parent-child
11 relationship or requests that the department be named conservator
12 of the child is terminated and the suit is automatically dismissed
13 without a court order.

14 (b) Unless the court has commenced the trial on the merits,
15 the court may not retain the suit on the court's docket after the
16 time described by Subsection (a) unless the court finds that
17 extraordinary circumstances necessitate the child remaining in the
18 temporary managing conservatorship of the department and that
19 continuing the appointment of the department as temporary managing
20 conservator is in the best interest of the child. If the court
21 makes those findings, the court may retain the suit on the court's
22 docket for a period not to exceed 180 days after the time described
23 by Subsection (a). If the court retains the suit on the court's
24 docket, the court shall render an order in which the court:

25 (1) schedules the new date on which the suit will be
26 automatically dismissed if the trial on the merits has not
27 commenced, which date must be not later than the 180th day after the

1 time described by Subsection (a);

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 on a date not later
6 than the date specified under Subdivision (1).

7 (b-1) If, after commencement of the initial trial on the
8 merits within the time required by Subsection (a) or (b), the court
9 grants a motion for a new trial or mistrial, or the case is remanded
10 to the court by an appellate court following an appeal of the
11 court's final order, the court shall retain the suit on the court's
12 docket and render an order in which the court:

13 (1) schedules a new date on which the suit will be
14 automatically dismissed if the new trial has not commenced, which
15 must be a date not later than the 180th day after the date on which:

16 (A) the motion for a new trial or mistrial is
17 granted; or

18 (B) the appellate court remanded the case;

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

22 (3) sets the new trial on the merits for a date not
23 later than the date specified under Subdivision (1).

24 (c) If the court grants an extension under Subsection (b) or
25 (b-1) but does not commence the trial on the merits before the
26 dismissal date, the court's jurisdiction over ~~[court shall dismiss]~~
27 the suit is terminated and the suit is automatically dismissed

1 without a court order. The court may not grant an additional
2 extension that extends the suit beyond the required date for
3 dismissal under Subsection (b) or (b-1), as applicable.

4 SECTION 16. Section 264.009(a), Family Code, is amended to
5 read as follows:

6 (a) Except as provided by Subsection (b) [~~(c)~~] or (f), in
7 any action under this code, the department shall be represented in
8 court by the county attorney of the county where the action is
9 brought, unless the district attorney or criminal district attorney
10 of the county elects to provide representation.

11 SECTION 17. The following provisions are repealed:

- 12 (1) Article 56.54(j), Code of Criminal Procedure;
- 13 (2) Section 201.014(b), Family Code;
- 14 (3) Subchapter C, Chapter 201, Family Code; and
- 15 (4) Sections 264.009(c), (d), and (e), Family Code.

16 SECTION 18. (a) Except as provided by Subsection (b) of
17 this section, the changes in law made by this Act apply only to a
18 suit filed by the Department of Family and Protective Services on or
19 after the effective date of this Act. A suit filed by the
20 department before that date is governed by the law in effect on the
21 date the suit was filed, and the former law is continued in effect
22 for that purpose.

23 (b) The changes made by this Act to Section 263.401, Family
24 Code, apply only to a suit affecting the parent-child relationship
25 pending in a trial court on the effective date of this Act or filed
26 on or after the effective date of this Act. A suit affecting the
27 parent-child relationship in which a final order is rendered before

1 the effective date of this Act is governed by the law in effect on
2 the date the order was rendered, and the former law is continued in
3 effect for that purpose.

4 SECTION 19. This Act takes effect September 1, 2017.