86R13055 MCK-F

By:  Hughes S.B. No. 2091

A BILL TO BE ENTITLED

AN ACT

relating to the procedures and grounds for terminating the parent-child relationship, for taking possession of a child, and for certain hearings in a suit affecting the parent-child relationship involving the Department of Family and Protective Services.

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

SECTION 1.  Sections 161.001(c) and (e), Family Code, are amended to read as follows:

(c)  In making [~~A court may not make~~] a finding under Subsection (b) and ordering [~~order~~] termination of the parent-child relationship, the court may not consider [~~based on~~] evidence that the parent:

(1)  homeschooled the child;

(2)  is economically disadvantaged;

(3)  has been charged with a nonviolent misdemeanor offense other than:

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

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

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

(4)  provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; [~~or~~]

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

(6)  allowed a child, who is of sufficient maturity, physical condition, and mental ability to avoid substantial risk of physical harm, to engage in independent activities, including:

(A)  traveling to and from the child's home and school, including by walking, running, or bicycling;

(B)  traveling to and from the child's home and a commercial or recreational facility near to the child's home;

(C)  engaging in outdoor play;

(D)  remaining at the child's home unattended; or

(E)  engaging in other age-appropriate normalcy activities as defined by Section 264.001.

(e)  This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c), for purposes other than a finding under Subsection (b), as part of an action to terminate the parent-child relationship under this subchapter.

SECTION 2.  Section 161.101, Family Code, is amended to read as follows:

Sec. 161.101.  PETITION ALLEGATIONS. (a) A petition for the termination of the parent-child relationship is sufficient without the necessity of specifying the underlying facts if the petition alleges in the statutory language the ground for the termination and that termination is in the best interest of the child.

(b)  A petition or motion filed by the Department of Family and Protective Services is subject to Chapter 10, Civil Practice and Remedies Code, and Rule 13, Texas Rules of Civil Procedure.

SECTION 3.  Section 261.001(4), Family Code, is amended to read as follows:

(4)  "Neglect":

(A)  includes:

(i)  the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii)  the following acts or omissions by a person:

(a)  placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities without taking reasonable precautionary measures and that results in bodily injury or a substantial risk of immediate harm to the child;

(b)  failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c)  the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(d)  placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(e)  placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child;

(iii)  the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(iv)  a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B)  does not include:

(i)  the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(a) [~~(i)~~]  the child has a severe emotional disturbance;

(b) [~~(ii)~~]  the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(c) [~~(iii)~~]  the person has exhausted all reasonable means available to the person to obtain the mental health services described by Sub-subparagraph (b); or

(ii)  the decision by a person responsible for a child's care, custody, or welfare to permit the child, if the child is of sufficient maturity, physical condition, and mental ability to avoid substantial risk of physical harm, to engage in independent activities, including:

(a)  traveling to and from the child's home and school, including by walking, running, or bicycling;

(b)  traveling to and from the child's home and a commercial or recreational facility near to the child's home;

(c)  engaging in outdoor play;

(d)  remaining at the child's home unattended; or

(e)  engaging in other age-appropriate normalcy activities as defined by Section 264.001 [~~Subparagraph (ii)~~].

SECTION 4.  Section 262.001, Family Code, is amended by adding Subsection (c) to read as follows:

(c)  In determining the reasonable efforts that are required to be made with respect to preventing or eliminating the need to remove a child from the child's home, the court shall consider whether the immediate danger to the physical health and safety of the child outweighs the emotional distress or lasting adverse effects on the child's mental or emotional functioning that may result from removing the child from the child's home or parent.

SECTION 5.  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)  continuation in the home would be contrary to the child's welfare;

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

(5)  the immediate danger to the physical health and safety of the child outweighs the emotional distress or lasting adverse effects on the child's mental or emotional functioning that may result from removing the child from the child's home or parent.

SECTION 6.  Section 262.105(b), Family Code, is amended to read as follows:

(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 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; and

(D)  the immediate danger to the physical health and safety of the child outweighs the emotional distress or lasting adverse effects on the child's mental or emotional functioning that may result from removing the child from the child's home or parent.

SECTION 7.  Section 262.113, Family Code, is amended to read as follows:

Sec. 262.113.  FILING SUIT WITHOUT TAKING POSSESSION OF CHILD. An original suit filed by a governmental entity that requests to take possession of a child after 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 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 that allowing the child to remain 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, have been made to prevent or eliminate the need to remove the child from the child's home; and

(3)  the immediate danger to the physical health and safety of the child outweighs the emotional distress or lasting adverse effects on the child's mental or emotional functioning that may result from removing the child from the child's home or parent.

SECTION 8.  Section 262.116(a), Family Code, is amended to read as follows:

(a)  The Department of Family and Protective Services may not take possession of a child under this subchapter based on evidence that the parent:

(1)  homeschooled the child;

(2)  is economically disadvantaged;

(3)  has been charged with a nonviolent misdemeanor offense other than:

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

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

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

(4)  provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; [~~or~~]

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

(6)  allowed a child, who is of sufficient maturity, physical condition, and mental ability to avoid substantial risk of physical harm, to engage in independent activities, including:

(A)  traveling to and from the child's home and school, including by walking, running, or bicycling;

(B)  traveling to and from the child's home and a commercial or recreational facility near to the child's home;

(C)  engaging in outdoor play;

(D)  remaining at the child's home unattended; or

(E)  engaging in other age-appropriate normalcy activities as defined by Section 264.001.

SECTION 9.  Section 262.201(a), Family Code, as amended by Chapters 317 (H.B. 7) and 910 (S.B. 999), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

(a)  In a suit filed under Section 262.101 or 262.105, unless the child has already been returned to a [~~the~~] parent, managing conservator, possessory 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) or (e-1).

SECTION 10.  Section 262.201, Family Code, is amended by amending Subsections (e-1), (g), (h), (j), and (n) and adding Subsections (g-1) and (n-1) to read as follows:

(e-1)  If a parent who is not indigent appears in opposition to the suit, the court may, for good cause shown, postpone the full adversary hearing for not more than seven days from the date of the parent's appearance to allow the parent to hire an attorney or to provide the parent's attorney time to respond to the petition and prepare for the hearing. A postponement under this subsection is subject to the limits and requirements prescribed by Subsection (e) and Section 155.207.

(g)  In a suit filed under Section 262.101 or 262.105, at the conclusion of the full adversary hearing, the court shall order the return of the child to a [~~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; and

(4)  the substantial risk of continuing danger to the physical health and safety of the child outweighs the emotional distress or lasting adverse effects on the child's mental or emotional functioning that may result from removing the child from the child's home or parent.

(g-1)  In a suit filed under Section 262.101 or 262.105, if the court does not order the return of the child under Subsection (g) and finds that another parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession did not cause the immediate danger to the physical health or safety of the child or was not the perpetrator of the neglect or abuse alleged in the suit, the court shall grant possession of the child to that person unless the court finds, specific to each person entitled to possession, that:

(1)  the person cannot be located after the exercise of due diligence by the department or the person is unable or unwilling to take possession of the child; or

(2)  granting possession of the child to that person presents a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person, including a danger that the child would be a victim of trafficking under Section 20A.02 or 20A.03, Penal Code.

(h)  In a suit filed under Section 262.101 or 262.105, 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 person's home is contrary to the welfare of the child, and the immediate danger to the physical health and safety of the child outweighs the emotional distress or lasting adverse effects on the child's mental or emotional functioning that may result from removing the child from the child's home or parent, 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, with respect to each parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession, [~~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 person's 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; and

(3)  the immediate danger to the physical health and safety of the child outweighs the emotional distress or lasting adverse effects on the child's mental or emotional functioning that may result from removing the child from the child's home or parent.

(n)  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 the court finds that placement with the noncustodial parent [~~or a relative~~] is not in the best interest of the child because the placement would significantly impair the child's physical health or emotional development.

(n-1)  If the court does not place a child with a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession under Subsection (g) or (g-1), the court shall place the child with a relative of the child unless the court finds that the placement with a relative is not in the best interest of the child.

SECTION 11.  Section 263.002, Family Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c)  At each permanency hearing before the final order, the court shall review the placement of each child in the temporary managing conservatorship of the department who has not been returned to the child's home. At the end of the hearing, the court shall order the department to return the child to the child's parent or parents unless the court finds, with respect to each parent, that:

(1)  there is a continuing danger to the physical health or safety of the child; and

(2)  returning the child to the child's parent or parents [~~The court shall make a finding on whether returning the child to the child's home is safe and appropriate, whether the return is in the best interest of the child, and whether it~~] is contrary to the welfare of the child [~~for the child to return home~~].

(d)  If the court renders an order to return the child to the child's parent or parents under Section 263.403, the court may retain jurisdiction as provided by that section and not dismiss the suit or render a final order as required by Section 263.401.

SECTION 12.  Subchapter E, Chapter 263, Family Code, is amended by adding Section 263.4011 to read as follows:

Sec. 263.4011.  RENDERING FINAL ORDER; EXTENSION. (a) On timely commencement of the trial on the merits under Section 263.401, the court shall render a final order not later than the 90th day after the date the trial commences.

(b)  The 90-day period for rendering a final order under Subsection (a) is not tolled for any recess during the trial.

(c)  If the court finds that extraordinary circumstances necessitate extending the 90-day period under Subsection (a), the court may extend that date for not longer than 30 days. The court shall render a written order:

(1)  specifying the grounds on which the extension is granted; and

(2)  requiring a final order to be rendered not later than the 30th day after the date the extension is granted.

(d)  A party may file a mandamus proceeding if the court fails to render a final order within the time required by this section.

SECTION 13.  Section 263.404(a), Family Code, is amended to read as follows:

(a)  The court may render a final order appointing the department as managing conservator of the child without terminating the rights of the parent of the child if the court finds that:

(1)  appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; [~~and~~]

(2)  it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator; and

(3)  if the child has previously been in the conservatorship of the department, there is sufficient evidence to demonstrate that termination of parental rights to the child is not possible or not in the child's best interest.

SECTION 14.  Sections 263.501(a) and (b), Family Code, are amended to read as follows:

(a)  If the department has been named as a child's managing conservator in a final order that does not include termination of parental rights, the court shall conduct a permanency hearing after the final order is rendered at least once every six months until the department is no longer the child's managing conservator. If the child's permanency goal is conservatorship with a relative or other designated caregiver that includes a permanency care assistance agreement with the department, the court shall conduct additional permanency hearings at least once every 90 days until an order dismissing the department as the child's conservator is rendered.

(b)  If the department has been named as a child's managing conservator in a final order that terminates a parent's parental rights, the court shall conduct a permanency hearing not later than the 90th day after the date the court renders the final order. The court shall conduct additional permanency hearings at least once every six months until the department is no longer the child's managing conservator. If the child's permanency goal is adoption or conservatorship with a relative or other designated caregiver that includes a permanency care assistance agreement with the department, the court shall conduct additional permanency hearings at least once every 90 days until an adoption order or an order dismissing the department as the child's conservator is rendered.

SECTION 15.  Section 264.203, Family Code, is amended to read as follows:

Sec. 264.203.  REQUIRED PARTICIPATION. (a) The department may file a suit requesting [~~Except as provided by Subsection (d),~~] the court to render a temporary [~~on request of the department may~~] order requiring the parent, managing conservator, guardian, or other member of the [~~subject~~] child's household to:

(1)  participate in the services for which the department makes a referral or services the department provides or purchases for:

(A)  alleviating the effects of the abuse or neglect that has occurred; or

(B)  reducing a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household [~~the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future~~]; and

(2)  permit the child and any siblings of the child to receive the services.

(b)  A suit requesting an order under this section may be filed in a court with jurisdiction to hear the suit in the county in which the child is located [~~The department may request the court to order the parent, managing conservator, guardian, or other member of the child's household to participate in the services whether the child resides in the home or has been removed from the home~~].

(c)  Except as otherwise provided by this subchapter, the suit is governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit [~~If the person ordered to participate in the services fails to follow the court's order, the court may impose appropriate sanctions in order to protect the health and safety of the child, including the removal of the child as specified by Chapter 262~~].

(d)  The petition shall be supported by an affidavit by a person based on personal knowledge or the person's belief based on representations made to the person by a person with personal knowledge and stating facts sufficient to support a finding that:

(1)  the child has been a victim of abuse or neglect or is at substantial risk of abuse or neglect; and

(2)  there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household unless that person participates in services requested by the department [~~If the court does not order the person to participate, the court in writing shall specify the reasons for not ordering participation~~].

(e)  In a suit filed under this section, the court may render a temporary restraining order as provided by Section 105.001.

(f)  The court shall hold a hearing on the petition not later than the 14th day after the date the petition is filed.

(g)  The court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing but before the hearing to ensure adequate representation of the child. The attorney ad litem for the child shall have the powers and duties of an attorney ad litem for a child under Chapter 107.

(h)  The court shall appoint an attorney ad litem to represent the interests of a parent for whom participation in services is being requested immediately after the filing but before the hearing to ensure adequate representation of the parent. The attorney ad litem for the parent shall have the powers and duties of an attorney ad litem for a parent under Section 107.0131.

(i)  Before commencement of the hearing, the court shall inform each parent of:

(1)  the parent's right to be represented by an attorney; and

(2)  for a parent who is indigent and appears in opposition to the motion, the parent's right to a court-appointed attorney.

(j)  If a parent claims indigence, 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 court determines the parent is indigent, the attorney ad litem appointed to represent the interests of the parent may continue the representation. If the court determines the parent is not indigent, the court shall discharge the attorney ad litem from the appointment after the hearing.

(k)  The court may, for good cause shown, postpone any subsequent proceedings for not more than seven days after the date of the attorney ad litem's discharge to allow the parent to hire an attorney or to provide the parent's attorney time to prepare for the subsequent proceeding.

(l)  An order may not be rendered under this section except after notice and hearing.

(m)  At the conclusion of the hearing, the court shall deny the petition unless the court finds by a preponderance of evidence that:

(1)  abuse or neglect has occurred or 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; and

(2)  services to the family are necessary to ensure the safety of the child.

(n)  If the court finds sufficient evidence under Subsection (m), the court shall:

(1)  state its findings of fact in the order;

(2)  make appropriate temporary orders under Chapter 105 necessary to ensure the safety of the child; and

(3)  order the participation in specific services narrowly tailored to address the findings made by the court under Subsection (m).

(o)  Not later than the 60th day after the date the court renders an order under this section, the court shall hold a status hearing to review the status of each party and the child and the services provided, purchased, or referred for the family. The court shall set subsequent review hearings every 60 days to review the continued need for the order.

(p)  An order rendered under this section expires on the 180th day after the date the order is signed unless it is renewed as provided by Subsection (q).

(q)  The court may renew an order rendered under this section on a showing by the department of a continuing need for the order, after notice and hearing. The order may be renewed only one time for not longer than 180 days.

(r)  At any time, a party affected by the order may request the court to terminate the order. The court shall terminate the order on a finding that there is no longer a need for the order.

SECTION 16.  Section 262.201(a-5), Family Code, is repealed.

SECTION 17.  The changes in law made by this Act apply only to a suit filed by the Department of Family and Protective Services on or after the effective date of this Act. A suit filed by the department before that date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 18.  To the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 19.  This Act takes effect October 1, 2019.