

By: Gates

H.B. No. 127

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to procedures in certain suits affecting the parent-child  
3 relationship filed by the Department of Family and Protective  
4 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. (a) 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) continuation in the home would be contrary to the  
18 child's welfare;

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

22 (4) the child would not be adequately protected in the  
23 child's home with an order for the removal of the alleged  
24 perpetrator under Section 262.1015 or 262.1016 or a protective

1 order issued under Title 4;

2 (5) placing the child with a relative or designated  
3 caregiver or with a caregiver under a parental child safety  
4 placement agreement authorized by Subchapter L, Chapter 264:

5 (A) was offered but refused;

6 (B) was not possible because there was no time,  
7 consistent with the physical health or safety of the child and the  
8 nature of the emergency, to conduct the caregiver evaluation; or

9 (C) would pose an immediate danger to the  
10 physical health or safety of the child; and

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

14 (b) The affidavit required by Subsection (a) must describe  
15 all reasonable efforts that were made to prevent or eliminate the  
16 need for the removal of the child.

17 SECTION 2. Subchapter B, Chapter 262, Family Code, is  
18 amended by adding Section 262.1016 to read as follows:

19 Sec. 262.1016. AGREED ORDER FOR REMOVAL OF ALLEGED  
20 PERPETRATOR. (a) An alleged perpetrator of abuse or neglect may  
21 agree in writing to an order under Section 262.1015 requiring the  
22 alleged perpetrator to leave the residence of the child. An  
23 agreement under this section is subject to the approval of the  
24 court.

25 (b) An agreed order under this section must contain the  
26 following statement in boldface type and capital letters: "YOUR  
27 AGREEMENT TO THIS ORDER IS NOT AN ADMISSION OF CHILD ABUSE OR

1 NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION  
2 OF CHILD ABUSE OR NEGLECT."

3 (c) An agreed order under this section may not be used  
4 against an alleged perpetrator as an admission of child abuse or  
5 neglect.

6 (d) An agreed order under this section is enforceable  
7 civilly or criminally but is not enforceable as a contract.

8 (e) At any time, a person affected by an agreed order under  
9 this section may request the court to terminate the order. The court  
10 shall terminate the agreed order on finding the order is no longer  
11 needed and terminating the order is in the best interest of the  
12 child.

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

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

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

26 (3) there is no time, consistent with the physical  
27 health or safety of the child and the nature of the emergency, for a

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

2 (4) the child would not be adequately protected in the  
3 child's home with an order for the removal of the alleged  
4 perpetrator under Section 262.1015 or 262.1016 or a protective  
5 order issued under Title 4;

6 (5) placing the child with a relative or designated  
7 caregiver or with a caregiver under a parental child safety  
8 placement agreement authorized by Subchapter L, Chapter 264:

9 (A) was offered but refused;

10 (B) was not possible because there was no time,  
11 consistent with the physical health or safety of the child and the  
12 nature of the emergency, to conduct the caregiver evaluation; or

13 (C) would pose an immediate danger to the  
14 physical health or safety of the child; and

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

18 SECTION 4. Section 262.105, Family Code, is amended by  
19 amending Subsection (b) and adding Subsection (c) to read as  
20 follows:

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

25 (1) based on the affiant's personal knowledge or on  
26 information furnished by another person corroborated by the  
27 affiant's personal knowledge, one of the following circumstances

1 existed at the time the child was taken into possession:

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

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

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

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

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

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

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

19 (C) the child would not be adequately protected  
20 in the child's home with an order for the removal of the alleged  
21 perpetrator under Section 262.1015 or 262.1016 or a protective  
22 order issued under Title 4;

23 (D) placing the child with a relative or  
24 designated caregiver or with a caregiver under a parental child  
25 safety placement agreement authorized by Subchapter L, Chapter 264:

26 (i) was offered but refused;

27 (ii) was not possible because there was no

1 time, consistent with the physical health or safety of the child and  
2 the nature of the emergency, to conduct the caregiver evaluation;  
3 or

4 (iii) would pose an immediate danger to the  
5 physical health or safety of the child; and

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

9 (c) The affidavit required by Subsection (b) must describe  
10 all reasonable efforts that were made to prevent or eliminate the  
11 need for the removal of the child.

12 SECTION 5. Section 262.107(a), Family Code, is amended to  
13 read as follows:

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

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

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

25 (B) the child has been the victim of sexual abuse  
26 or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one  
27 or more occasions and that there is a substantial risk that the

1 child will be the victim of sexual abuse or of trafficking in the  
2 future;

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

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

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

12 (3) the child would not be adequately protected in the  
13 child's home with an order for the removal of the alleged  
14 perpetrator under Section 262.1015 or 262.1016 or a protective  
15 order issued under Title 4;

16 (4) placing the child with a relative or designated  
17 caregiver or with a caregiver under a parental child safety  
18 placement agreement authorized by Subchapter L, Chapter 264:

19 (A) was offered but refused;

20 (B) was not possible because there was no time,  
21 consistent with the physical health or safety of the child and the  
22 nature of the emergency, to conduct the caregiver evaluation; or

23 (C) would pose an immediate danger to the  
24 physical health or safety of the child; and

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

1 SECTION 6. Section 262.113, Family Code, is amended to read  
2 as follows:

3 Sec. 262.113. FILING SUIT WITHOUT TAKING POSSESSION OF  
4 CHILD. (a) An original suit filed by a governmental entity that  
5 requests to take possession of a child after notice and a hearing  
6 must be supported by an affidavit sworn to by a person with personal  
7 knowledge and stating facts sufficient to satisfy a person of  
8 ordinary prudence and caution that:

9 (1) there is a continuing danger to the physical  
10 health or safety of the child caused by an act or failure to act of  
11 the person entitled to possession of the child and that allowing the  
12 child to remain in the home would be contrary to the child's  
13 welfare; and

14 (2) reasonable efforts, consistent with the  
15 circumstances and providing for the safety of the child, have been  
16 made to prevent or eliminate the need to remove the child from the  
17 child's home.

18 (b) The affidavit required by Subsection (a) must describe  
19 all reasonable efforts that were made to prevent or eliminate the  
20 need for the removal of the child.

21 SECTION 7. The changes in law made by this Act apply to a  
22 suit affecting the parent-child relationship that is filed on or  
23 after the effective date of this Act. A suit filed before the  
24 effective date of this Act is governed by the law in effect on the  
25 date that the suit is filed, and the former law is continued in  
26 effect for that purpose.

27 SECTION 8. This Act takes effect September 1, 2021.