

BILL ANALYSIS

Senate Research Center

H.B. 567
By: Frank et al. (Hughes)
State Affairs
4/19/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 567 remedies various due process deficiencies in the Child Protective Services (CPS) system. This bill clarifies standards in the Texas Family Code that the Department of Family and Protective Services and Texas courts use when making life-altering decisions concerning the removal of children and termination of parental rights. Some of these changes include making CPS cases subject to the same pleading requirements that all other civil cases are subject to in Texas. This bill reduces the harm to children by unnecessarily separating them from their families, prioritizes support for families over removal, and ensures that minimum due-process standards are met before families can be forced into court-ordered services.

This bill is the culmination of many hours of hard work over the past few years by the Texas Public Policy Foundation, the National Association of Social Workers, the Homeschool Coalition, Tex Protects, Texans Care and many others. We are grateful for their work.

Lastly, this bill is necessary to protect families from undue burdens of their government. This bill protects a parent's fundamental right to raise their children and is an effort to protect and respect that right.

What does H.B. 567 do?

- Seeks to prevent investigations for normal parenting by redefining neglect;
- Reduce trauma caused by removing children from their home;
- Insures fair adjudication of rights for non-offending parents;
- Requires return of a child at permanency hearing unless there is a finding of continuing danger to the child;
- Establishes deadline for rendering a final order (90 days);
- Requires minimum due process standards are met before families can be required to participate in court ordered services; and
- Subjects termination cases to sanctions in Civil Practice and Remedies Code Chapter 10 and Texas Rules of Civil Procedure Rule 13.

H.B. 567 was voted out of the house of representatives last week with a vote of 143 Yeas, 5 Nays, 1 PNV, 1 Absent.

H.B. 567 repeals "Non-Emergency Removal" section of Family Code (Section 262.113) and corollary sections. With the amendment of court-ordered services, and appointment of counsel, the situations in which Child Protective Services would need to intervene in a home to remove a child for safety reasons would constitute an emergency. Therefore, non-emergency removals are unnecessary.

H.B. 567 adds a new limitation on removals under Family Code, Section 262.116, that testing positive for marijuana use alone is not sufficient for removing a child from his or her home.

H.B. 567 amends current law 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.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 107.003(b), Family Code, as follows:

(b) Requires an attorney ad litem appointed for a child in a proceeding under certain chapters, including Chapter 264 (Child Welfare Services), to fulfill certain duties in addition to the duties required by Subsection (a) (relating to the powers and duties of an attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court). Makes nonsubstantive changes.

SECTION 2. Amends Sections 107.004(d), (d-2), (d-3), and (e), Family Code, to make conforming changes.

SECTION 3. Amends Section 161.001(c), Family Code, as follows:

(c) Provides that certain evidence does not constitute clear and convincing evidence sufficient for a court to make a finding under Subsection (b) (relating to criteria for court-ordered termination of the parent-child relationship) and order termination of the parent-child relationship, including evidence that the parent allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 161.101, Family Code, as follows:

Sec. 161.101. New heading: PETITION ALLEGATIONS; PETITION AND MOTION REQUIREMENTS. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that a petition or motion filed by the Department of Family and Protective Services (DFPS) in a suit for termination of the parent-child relationship is subject to Chapter 10 (Sanctions for Frivolous Pleadings and Motions), Civil Practice and Remedies Code, and Rule 13, Texas Rules of Civil Procedure.

SECTION 5. Amends Section 261.001(4), Family Code, as follows:

(4) Redefines "neglect," for purposes of Chapter 261 (Investigation of Report of Child Abuse or Neglect) as an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger, rather than a substantial risk, to the child's physical health or safety. Excludes from the criteria for neglect allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 262.116(a), Family Code, as follows:

(a) Prohibits DFPS from taking possession of a child under Subchapter B (Taking Possession of Child) based on evidence that the parent:

(1)-(3) makes no changes to these subdivisions;

(4) and (5) makes nonsubstantive changes to these subdivisions;

(6) allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture; or

(7) tested positive for marihuana, unless the department has evidence that the parent's use of marihuana has caused significant impairment to the child's physical or mental health or emotional development.

SECTION 7. Amends Section 262.201, Family Code, by amending Subsections (e), (g), (h), and (n) and adding Subsections (g-1) and (q), as follows:

(e) Requires the court, if the court postpones the full adversary hearing, to extend a temporary order, temporary restraining order, or attachment issued by the court under Section 262.102(a) (relating to the criteria under which a court is authorized to issue an emergency order authorizing possession of a child), rather than under Section 262.102(a) or Section 262.1131 (Temporary Restraining Order Before Full Adversary Hearing), for the protection of the child until the date of the rescheduled full adversary hearing.

(g) Requires the court, in a suit filed under Section 262.101 (Filing Petition Before Taking Possession of Child) or 262.105 (Filing Petition After Taking Possession of Child in Emergency), at the conclusion of the full adversary hearing, to order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession from whom the child is removed, rather than the custodian entitled to possession, unless the court finds certain sufficient evidence.

(g-1) Requires the court, 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, to order possession of the child by that person unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that, specific to each person entitled to possession:

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

(2) reasonable efforts have been made to enable the person's possession of the child, but possession by 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 (Trafficking of Persons) or 20A.03 (Continuous Trafficking of Persons), Penal Code.

(h) Requires the court to issue an appropriate temporary order under Chapter 105 (Settings, Hearings, and Orders) in a suit filed under Section 262.101 or 262.105, if the court finds sufficient evidence to make the applicable finding under Subsection (g) or (g-1), rather than 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.

(n) Requires the court, if it does not order possession of a child by a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession under Subsection (g) or (g-1), to 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. Deletes existing text requiring the court to 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. Makes nonsubstantive changes.

(q) Requires DFPS, on receipt of a written request for possession of the child from a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession of the child who was not located before the adversary hearing, to notify the court and request a hearing to determine whether that person is entitled to possession of the child under Subsection (g-1).

SECTION 8. Amends Section 263.002, Family Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires the court, at the end of each permanency hearing before the final order, to order DFPS to return the child to the child's parent or parents unless the court finds, with respect to each parent, that there is a continuing danger to the physical health or safety of the child, and that returning the child to the child's parent or parents is contrary to the welfare of the child. Deletes existing text requiring that the court make a finding on whether returning the child to the child's home is safe and appropriate, and whether the return is in the best interest of the child.

(d) Provides that Section 263.002 (Review of Placements by Court; Findings) does not prohibit the court from rendering an order under Section 263.403 (Monitored Return of Child to Parent).

SECTION 9. Amends Section 263.401, Family Code, by adding Subsection (b-3), as follows:

(b-3) Requires a court to find under Subsection (b) (relating to criteria under which a court may retain a suit affecting the parent-child relationship) that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of DFPS if a parent of a child has made a good faith effort to successfully complete the service plan but needs additional time, and if on completion of the service plan the court intends to order the child returned to the parent.

SECTION 10. Amends Subchapter E, Chapter 263, Family Code, by adding Section 263.4011, as follows:

Sec. 263.4011. RENDERING FINAL ORDER; EXTENSION. (a) Requires the court, on timely commencement of the trial on the merits under Section 263.401 (Dismissal After One Year; New Trials; Extension), to render a final order not later than the 90th day after the date the trial commences.

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

(c) Authorizes the court to extend the 90-day period under Subsection (a) for the period the court determines necessary if, after a hearing, the court finds good cause for the extension. Requires the court, if the court grants a good cause extension under this subsection, to render a written order specifying the grounds on which the extension is granted and the length of the extension.

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

SECTION 11. Amends Section 263.403(a-1), Family Code, as follows:

(a-1) Authorizes DFPS or the parent, unless the court has granted an extension under Section 263.401(b), to request the court to retain jurisdiction for an additional six months as necessary for a parent to complete the remaining requirements under a service plan in a transition monitored return under Subsection (a)(2)(B) (relating to a temporary court order for DFPS to transition the child from substitute care to the parent while the parent completes remaining specified requirements), rather than the requirements in a service plan and specified in the temporary order that are mandatory for the child's return.

SECTION 12. Amends Section 264.203, Family Code, as follows:

Sec. 264.203. REQUIRED PARTICIPATION. (a) Authorizes DFPS to file a suit requesting the court to render a temporary order requiring the parent, managing conservator, guardian, or other member of the child's household, rather than authorizes the court on request of DFPS, except as provided by Subsection (d), to order the parent, managing conservator, guardian, or other member of the subject child's household, to:

(1) participate in certain services, including services for which DFPS makes a referral for:

(A) makes no changes to this paragraph;

(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, rather than reducing the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future; or

(C) reducing a substantial risk of abuse or neglect caused by an act or failure to act of the parent, managing conservator, guardian, or member of the child's household; and

(2) makes no changes to this subdivision.

(b) Authorizes a suit requesting an order under this section to be filed in a court with jurisdiction to hear the suit in the county in which the child is located.

(c) Provides that, except as otherwise provided by Subchapter C (Child and Family Services), the suit is governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit.

(d) Requires that the petition be supported by a sworn affidavit by a person based on 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 DFPS.

Deletes existing text authorizing DFPS to 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. Deletes existing text authorizing the court, if the person ordered to participate in the services fails to follow the court's order, to 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 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child). Deletes existing

text requiring the court in writing, if the court does not order the person to participate, to specify the reasons for not ordering participation.

(e) Authorizes the court, in a suit filed under this section, to render a temporary restraining order as provided by Section 105.001 (Temporary Orders Before Final Order).

(f) Requires the court to hold a hearing on the petition not later than the 14th day after the date the petition is filed unless the court finds good cause for extending that date for not more than 14 days.

(g) Requires the court to 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. Requires the attorney ad litem for the child to have the powers and duties of an attorney ad litem for a child under Chapter 107 (Special Appointments, Child Custody Evaluations, and Adoption Evaluations).

(h) Requires the court to 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. Requires the attorney ad litem for the parent to have the powers and duties of an attorney ad litem for a parent under Section 107.0131 (Powers and Duties of Attorney Ad Litem for Parent).

(i) Requires the court, before commencement of the hearing, to inform each parent of the parent's right to be represented by an attorney, and, for a parent who is indigent and appears in opposition to the motion, the parent's right to a court-appointed attorney.

(j) Requires the court, if a parent claims indigence, to require the parent to complete and file with the court an affidavit of indigence. Authorizes the court to consider certain additional evidence to determine whether the parent is indigent. Authorizes the attorney ad litem appointed to represent the interests of the parent, if the court determines the parent is indigent, to continue the representation. Requires the court, if the court determines the parent is not indigent, to discharge the attorney ad litem from the appointment after the hearing and to order the parent to pay the cost of the attorney ad litem's representation.

(k) Authorizes the court, for good cause shown, to 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) Authorizes an order to be rendered under this section only after notice and hearing.

(m) Requires the court, at the conclusion of the hearing, to deny the petition unless the court finds by a preponderance of evidence that abuse or neglect has occurred or there is a substantial risk of abuse or neglect or 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; and that services are necessary to ensure the physical health or safety of the child.

(n) Requires the court, if it renders an order granting the petition, to state its findings in the order, make appropriate temporary orders under Chapter 105 necessary to ensure the safety of the child, and order the participation in specific services narrowly tailored to address the findings made by the court under Subsection (m).

(o) Prohibits the court, if it finds that a parent, managing conservator, guardian, or other member of the child's household did not cause the continuing danger to the physical health or safety of the child or the substantial risk of abuse or neglect, or was not the perpetrator of the abuse or neglect alleged, from requiring that person to participate in services ordered under Subsection (n).

(p) Requires the court to hold a hearing to review the status of each person required to participate in the services and the child and the services provided, purchased, or referred, not later than the 90th day after the date the court renders an order under this section. Requires the court to set subsequent review hearings every 90 days to review the continued need for the order.

(q) Provides that an order rendered under this section expires on the 180th day after the date the order is signed unless the court extends the order as provided by Subsection (r) or (s).

(r) Authorizes the court to extend an order rendered under this section on a showing by DFPS of a continuing need for the order, after notice and hearing. Authorizes the court, except as provided by Subsection (s), to extend the order only one time for not more than 180 days.

(s) Authorizes the court to extend an order rendered under this section for not more than an additional 180 days only if:

(1) the court finds that the extension is necessary to allow the person required to participate in services under the plan of service time to complete those services, DFPS made a good faith effort to timely provide the services to the person, the person made a good faith effort to complete the services, and the completion of the services is necessary to ensure the physical health and safety of the child; and

(2) the extension is requested by the person or the person's attorney.

(t) Authorizes a person affected by the order to request the court to terminate the order at any time. Requires the court to terminate the order on finding the order is no longer needed.

SECTION 13. (1) Repealer: Section 262.113 (Filing Suit Without Taking Possession of Child), Family Code.

(2) Repealer: Section 262.1131 (Temporary Restraining Order Before Full Adversary Hearing), Family Code.

(3) Repealer: Sections 262.201(b) (relating to requiring that a full adversary hearing in a suit filed under Section 262.113 requesting possession of a child be held not later than the 30th day after the date the suit is filed) and (j) (relating to requiring the court, at the conclusion of the full adversary hearing, in a suit filed by a government entity to take possession of a child, issue an appropriate temporary order for the safety and welfare of the child if the court finds certain sufficient evidence), Family Code.

SECTION 14. Provides that Section 161.101, Family Code, as amended by this Act, applies only to a petition or motion filed by DFPS on or after the effective date of this Act. Provides that a petition or motion filed by DFPS before that date is governed by the law in effect on the date the petition or motion was filed, and the former law is continued in effect for that purpose.

SECTION 15. Provides that the changes in law made by this Act apply only to a suit filed by DFPS on or after the effective date of this Act. Provides that a suit filed by DFPS 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 16. Effective date: September 1, 2021.