

BILL ANALYSIS

Senate Research Center

H.B. 2926
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Too many of the youths currently in the foster care system are not adequately prepared for the difficult challenges they will face when they inevitably age out of the foster care system and transition into adulthood. It has been suggested that the reinstatement of parental rights, when appropriate, provides greater safety and stability to these youths and their families, but there are concerns that Texas law does not sufficiently address this issue. H.B. 2926 seeks to address these concerns by providing for the reinstatement of the parent-child relationship under certain conditions.

H.B. 2926 promotes family preservation and provides second chances with the reinstatement of parental rights and a multi-stage, comprehensive process, including notification of intent to petition, a petition for reinstatement, a reinstatement hearing, and an order to grant, deny, or defer the reinstatement of parental rights.

A petition may be filed only if at least two years had passed since the issuance of the order terminating the former parent's parental rights and the child had not been adopted and was not the subject of an adoption placement agreement. A court must consider many different factors before issuing an order, including statements from the former parent and child, the child's age, and whether the former parent has the capacity and willingness to perform parental duties.

H.B. 2926 rests on the ideas of redemption and restoration. By providing a pathway for the reinstatement of parental rights for parents who have successfully rehabilitated, we can provide another tool to achieve permanency for children at-risk of aging out of foster care.

H.B. 2926 amends current law relating to the reinstatement of the parent-child relationship with respect to a person whose parental rights have been involuntarily terminated and to certain requirements in relation to the termination of the parent-child relationship or placement of a child in substitute care.

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 Chapter 161, Family Code, by adding Subchapter D, as follows:

SUBCHAPTER D. REINSTATEMENT OF PARENTAL RIGHTS AFTER INVOLUNTARY TERMINATION

Sec. 161.301. DEFINITIONS. Defines "commissioner" and "department."

Sec. 161.302. PETITION. (a) Authorizes the following persons to file a petition under this subchapter requesting the court to reinstate the parental rights of a former parent whose parental rights were involuntarily terminated under Section 161.001 (Involuntary Termination of Parent-Child Relationship) or 161.003 (Involuntary Termination: Inability to Care for Child):

- (1) the Department of Family and Protective Services (DFPS);
- (2) the single source continuum contractor under Subchapter B-1 (Community-Based Care), Chapter 264 (Child Welfare Services), with responsibility for the child who is the subject of the petition;
- (3) the attorney ad litem for the child who is the subject of the petition; or
- (4) the former parent whose parental rights were involuntarily terminated.

(b) Authorizes a petition for the reinstatement of parental rights to be filed under this subchapter only if:

- (1) the termination of parental rights resulted from a suit filed by DFPS;
- (2) at least two years have passed since the issuance of the order terminating the former parent's parental rights and an appeal of the order is not pending;
- (3) the child has not been adopted;
- (4) the child is not the subject of an adoption placement agreement; and
- (5) the petitioner has provided the notice required by Subsection (d), if the petitioner is the former parent whose parental rights are sought to be reinstated.

(c) Requires that the contents of the petition for reinstatement of parental rights be sworn by the petitioner and include certain information.

(d) Requires a former parent, before a former parent whose parental rights have been involuntarily terminated is authorized to file a petition for reinstatement under this subchapter, at least 45 days before the petition is filed, to notify DFPS of the former parent's intent to file the petition. Requires the commissioner of DFPS (commissioner) to create a form to be used by a former parent for that notice that includes the information listed in Subsection (c). Requires that a copy of the notice be filed with the petition.

(e) Requires that the petition for the reinstatement of parental rights and notice of hearing on the petition be served on:

- (1) the child or the child's representative;
- (2) the county attorney;
- (3) the child's attorney ad litem;
- (4) DFPS or single source continuum contractor, if applicable;
- (5) the former parent whose parental rights are sought to be reinstated, if that former parent is not the petitioner; and
- (6) if the child is subject to the Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.), the designated tribal service agent of the child's tribe and any other person required by federal law.

Sec. 161.303. HEARING. (a) Requires that a reinstatement hearing under this subchapter be held not later than the 60th day after the date the petition is filed.

(b) Provides that the petitioner has the burden of proof in the hearing and that each party is authorized to call witnesses.

(c) Authorizes the court to grant the petition and order the reinstatement of the former parent's parental rights only if the court finds by a preponderance of the evidence that:

- (1) reinstatement of parental rights is in the child's best interests;
- (2) at least two years have passed since issuance of the order terminating parental rights and an appeal of the order is not pending;
- (3) the child has not been adopted and is not the subject of an adoption placement agreement;
- (4) if the child is 12 years of age or older, the child consents to the reinstatement and desires to reside with the parent;
- (5) the former parent has remedied the conditions that were grounds for rendering the order terminating parental rights; and
- (6) the former parent is willing and has the capability to perform parental duties as provided in Section 151.001, including maintaining the health, safety, and welfare of the child.

(d) Requires the court, in determining whether to grant a petition for reinstatement of parental rights under this subchapter in regard to a child who is 11 years of age or younger on the date the petition is filed, to consider the child's age, maturity, and ability to express a preference and authorizes the court to consider the child's preference regarding the reinstatement as one factor, considered along with all other relevant factors, in making the determination.

Sec. 161.304. ORDERS. (a) Authorizes the court, following a hearing under this subchapter, to render an order:

- (1) granting the petition;
- (2) denying the petition; or
- (3) deferring the decision on the petition and rendering a temporary order expiring after a period of six months during which DFPS remains the managing conservator of the child and the former parent is the possessory conservator.

(b) Provides that if the court defers granting the petition under Subsection (a)(3):

- (1) DFPS is required to monitor the possessory conservatorship of the former parent during the period of the temporary order; and
- (2) the court is required, when the temporary order expires, to hold a hearing to determine whether to grant or deny the petition for reinstatement.

(c) Requires the court, if, following a hearing under this subchapter, the court renders an order for reinstatement of parental rights, to enter the court's findings in a written order stating that all legal rights, powers, privileges, immunities, duties, and obligations of the former parent regarding the child, including with respect to custody, care, control, and support, are reinstated.

(d) Requires the court, if, following a hearing under this subchapter, the court denies a petition for reinstatement of parental rights, to render a written order that includes:

- (1) the court's findings and detailing reasons for denial of the petition; and
- (2) a statement prohibiting the filing of a subsequent petition in regard to the former parent's parental rights before the first anniversary of the date the order of denial was issued.

SECTION 2. Amends Subchapter C, Chapter 161, Family Code, by adding Section 161.2081, as follows:

Sec. 161.2081. NOTICE OF TERMINATION FOR CERTAIN RELATIVES. Requires DFPS, immediately after a court renders an order terminating the parent-child relationship in a suit filed by DFPS, to notify each individual described by Section 102.006(c) (relating to nonapplicability of the limitations on filing a suit imposed by Section 102.006) who has been identified under Section 262.1095 (Information Provided to Relatives and Certain Individuals; Investigation) that:

- (1) the parent-child relationship has been terminated; and
- (2) the individual has 90 days after the date the order is rendered to file an original suit or a suit for modification requesting managing conservatorship of the child in accordance with Section 102.006(c).

SECTION 3. Amends Section 262.1095(a), Family Code, to require DFPS, when DFPS or another agency takes possession of a child under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child), to take certain actions, including to provide information as prescribed by Section 262.1095 to each adult DFPS is able to identify and locate who is related to the child within the fourth degree, rather than within the third degree, by consanguinity as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code.

SECTION 4. Amends Section 262.114, Family Code, by adding Subsection (d), as follows:

(d) Requires DFPS, in making a placement decision for a child, to give preference to persons in the following order:

- (1) a person related to the child by blood, marriage, or adoption;
- (2) a person with whom the child has a long-standing and significant relationship;
- (3) a foster home; and
- (4) a general residential operation.

SECTION 5. Effective date: September 1, 2021.