87R7327 MLH-F

By:  Gates H.B. No. 1700

A BILL TO BE ENTITLED

AN ACT

relating to certain procedures in suits affecting the parent-child relationship filed by the Department of Family and Protective Services.

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

SECTION 1.  Section 102.008(b), Family Code, is amended to read as follows:

(b)  The petition must include:

(1)  a statement that:

(A)  the court in which the petition is filed has continuing, exclusive jurisdiction or that no court has continuing jurisdiction of the suit; or

(B)  in a suit in which adoption of a child is requested, the court in which the petition is filed has jurisdiction of the suit under Section 103.001(b);

(2)  the name and date of birth of the child, except that if adoption of a child is requested, the name of the child may be omitted;

(3)  the full name of the petitioner and the petitioner's relationship to the child or the fact that no relationship exists;

(4)  the names of the parents, except in a suit in which adoption is requested;

(5)  the name of the managing conservator, if any, or the child's custodian, if any, appointed by order of a court of another state or country;

(6)  the names of the guardians of the person and estate of the child, if any;

(7)  the names of possessory conservators or other persons, if any, having possession of or access to the child under an order of the court;

(8)  the name of an alleged father of the child or a statement that the identity of the father of the child is unknown;

(9)  a full description and statement of value of all property owned or possessed by the child;

(10)  a statement describing what action the court is requested to take concerning the child and the statutory grounds on which the request is made;

(11)  in a suit under Chapter 161, 261, or 262, a separate statement describing the particular statutory grounds of abuse or neglect alleged as to each applicable child;

(12)  a statement as to whether, in regard to a party to the suit or a child of a party to the suit:

(A)  there is in effect:

(i)  a protective order under Title 4;

(ii)  a protective order under Subchapter A, Chapter 7B, Code of Criminal Procedure; or

(iii)  an order for emergency protection under Article 17.292, Code of Criminal Procedure; or

(B)  an application for an order described by Paragraph (A) is pending; and

(13) [~~(12)~~]  any other information required by this title.

SECTION 2.  Chapter 102, Family Code, is amended by adding Section 102.0082 to read as follows:

Sec. 102.0082.  FRIVOLOUS PLEADINGS AND MOTIONS BY DEPARTMENT. A petition or motion filed by the Department of Family and Protective Services in a suit under Chapter 161, 261, or 262 is subject to Chapter 10, Civil Practice and Remedies Code, and Rule 13, Texas Rules of Civil Procedure.

SECTION 3.  Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3111 to read as follows:

Sec. 261.3111.  NOTICE REQUIRED ON INITIAL CONTACT WITH INDIVIDUAL SUBJECT TO INVESTIGATION. (a) At the time of the initial contact with an individual subject to an investigation under this chapter, or with the individual's legal representative, the department shall notify the individual or the legal representative of the complaints or allegations made against the individual by reading or otherwise providing the complete report made concerning the individual in a manner that is consistent with any laws protecting the rights of the informant.

(b)  The department shall give the notice required by Subsection (a) regardless of the manner in which the initial contact is made, including contact by telephone, by e-mail or other electronic communication, or in person.

(c)  The department shall provide a written copy of the notice required by this section on request of the individual subject to an investigation under this chapter or the individual's legal representative.

SECTION 4.  Sections 262.201(g), (h), and (j), Family Code, are amended to read as follows:

(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 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 clear and convincing evidence of a substantial risk of a continuing danger if the child is returned home.

(h)  In a suit filed under Section 262.101 or 262.105, if the court finds clear and convincing evidence [~~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, 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 [~~sufficient evidence to satisfy a person of ordinary prudence and caution that~~]:

(1)  clear and convincing evidence that 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 home would be contrary to the child's welfare; and

(2)  that 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.

SECTION 5.  Subchapter C, Chapter 262, Family Code, is amended by adding Section 262.207 to read as follows:

Sec. 262.207.  INTERVIEW AND EXAMINATION OF CHILD. (a) On the motion of a person responsible for a child's care, custody, or welfare being investigated for abuse or neglect of the child, the court shall render an order allowing the person's attorney to interview the child at least 72 hours before the full adversary hearing. A motion under this subsection may include a request to record the child's testimony as provided by Section 104.003.

(b)  On the motion of a person responsible for a child's care, custody, or welfare being investigated for abuse or neglect of the child, the court shall render an order allowing an examination of the child to be performed at least 72 hours before the full adversary hearing. The examination may include medical, dental, educational, developmental, psychological, or psychiatric evaluations or assessments by providers chosen by the person.

SECTION 6.  Section 264.408, Family Code, is amended by adding Subsection (d-2) to read as follows:

(d-2)  In a suit filed by the department under Chapter 161 or 262, the department shall produce an electronic recording of an interview described by Subsection (d) to the person responsible for a child's care, custody, or welfare being investigated for abuse or neglect. A court may not deny a request by the person to copy, photograph, duplicate, or otherwise reproduce an electronic recording of the interview.

SECTION 7.  The change in law made by this Act applies to a suit affecting the parent-child relationship that is pending on or filed on or after the effective date of this Act.

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