By:  Gates, et al. (Senate Sponsor - Kolkhorst) H.B. No. 2308

(In the Senate - Received from the House May 5, 2021; May 10, 2021, read first time and referred to Committee on Health & Human Services; May 20, 2021, reported favorably by the following vote: Yeas 8, Nays 0; May 20, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Buckingham        X

Campbell          X

Hall                       X

Miles             X

Powell            X

Seliger           X

A BILL TO BE ENTITLED

AN ACT

relating to procedures in certain 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 262.101, Family Code, is amended to read as follows:

Sec. 262.101.  FILING PETITION BEFORE TAKING POSSESSION OF CHILD. (a) 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)  the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section 262.1015 or 262.1016 or a protective order issued under Title 4;

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

(A)  was offered but refused;

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

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

(6)  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.

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

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

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

(b)  An agreed order under this section must contain the following statement in boldface type and capital letters: "YOUR AGREEMENT TO THIS ORDER IS NOT AN ADMISSION OF CHILD ABUSE OR NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION OF CHILD ABUSE OR NEGLECT."

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

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

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

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

(a)  Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section 105.001(a)(1) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find 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 and the nature of the emergency, for a full adversary hearing under Subchapter C; [~~and~~]

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

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

(A)  was offered but refused;

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

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

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

SECTION 4.  Section 262.105, Family Code, is amended by amending Subsection (b) and adding Subsection (c) 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)  the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section 262.1015 or 262.1016 or a protective order issued under Title 4;

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

(i)  was offered but refused;

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

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

(E)  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.

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

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

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

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

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

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

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

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

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

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

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

(A)  was offered but refused;

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

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

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

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

Sec. 262.113.  FILING SUIT WITHOUT TAKING POSSESSION OF CHILD. (a) 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.

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

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

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

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