By:  Parker, et al. (Senate Sponsor - Buckingham) H.B. No. 2926

(In the Senate - Received from the House May 12, 2021; May 13, 2021, read first time and referred to Committee on State Affairs; May 19, 2021, reported favorably by the following vote: Yeas 9, Nays 0; May 19, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Hughes          X

Birdwell        X

Campbell        X

Hall            X

Lucio           X

Nelson          X

Powell          X

Schwertner      X

Zaffirini       X

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1.  Chapter 161, Family Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. REINSTATEMENT OF PARENTAL RIGHTS AFTER INVOLUNTARY TERMINATION

Sec. 161.301.  DEFINITIONS. In this subchapter:

(1)  "Commissioner" means the commissioner of the Department of Family and Protective Services.

(2)  "Department" means the Department of Family and Protective Services.

Sec. 161.302.  PETITION. (a) The following persons may 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 or 161.003:

(1)  the department;

(2)  the single source continuum contractor under Subchapter B-1, Chapter 264, 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)  A petition for the reinstatement of parental rights may be filed under this subchapter only if:

(1)  the termination of parental rights resulted from a suit filed by the department;

(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)  The contents of the petition for reinstatement of parental rights must be sworn by the petitioner and must include:

(1)  the name of the petitioner;

(2)  the name and current residence address of the former parent whose parental rights are sought to be reinstated, if that former parent is not the petitioner;

(3)  the child's name, current residence address, and date and place of birth, if known;

(4)  the name, current residence address, and contact information, if known, of any party that:

(A)  participated in the original termination hearing; and

(B)  has information relevant to the determination of conservatorship of or possession of or access to the child;

(5)  a summary of the grounds on which the court rendered the order terminating the former parent's parental rights;

(6)  a summary statement of the facts and evidence that the petitioner believes demonstrate that the former parent whose parental rights are sought to be reinstated has the capacity and willingness to perform parental duties under Section 151.001, including steps the former parent has taken toward personal rehabilitation since the rendition of the order terminating parental rights, including mental health and substance abuse treatment, employment, or other personal history that demonstrates rehabilitation;

(7)  a statement of the former parent whose parental rights are sought to be reinstated requesting the reinstatement of parental rights;

(8)  a statement of the intent or willingness of the child to consent to the reinstatement of parental rights, if the child is 12 years of age or older; and

(9)  a summary of all prior requests or motions for reinstatement by the former parent whose parental rights are sought to be reinstated and by the petitioner, if the former parent is not the petitioner, with respect to that child.

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

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

(1)  the child or the child's representative;

(2)  the county attorney;

(3)  the child's attorney ad litem;

(4)  the department 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) A reinstatement hearing under this subchapter must be held not later than the 60th day after the date the petition is filed.

(b)  The petitioner has the burden of proof in the hearing, and each party may call witnesses.

(c)  The court may 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)  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, the court shall consider the child's age, maturity, and ability to express a preference and may 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) Following a hearing under this subchapter, the court may 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 the department remains the managing conservator of the child and the former parent is the possessory conservator.

(b)  If the court defers granting the petition under Subsection (a)(3):

(1)  the department shall monitor the possessory conservatorship of the former parent during the period of the temporary order; and

(2)  when the temporary order expires, the court shall hold a hearing to determine whether to grant or deny the petition for reinstatement.

(c)  If, following a hearing under this subchapter, the court renders an order for reinstatement of parental rights, the court shall 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)  If, following a hearing under this subchapter, the court denies a petition for reinstatement of parental rights, the court shall 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.  Subchapter C, Chapter 161, Family Code, is amended by adding Section 161.2081 to read as follows:

Sec. 161.2081.  NOTICE OF TERMINATION FOR CERTAIN RELATIVES. Immediately after a court renders an order terminating the parent-child relationship in a suit filed by the Department of Family and Protective Services, the department shall notify each individual described by Section 102.006(c) who has been identified under Section 262.1095 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.  Section 262.1095(a), Family Code, is amended to read as follows:

(a)  When the Department of Family and Protective Services or another agency takes possession of a child under this chapter, the department:

(1)  shall provide information as prescribed by this section to each adult the department is able to identify and locate who is:

(A)  related to the child within the fourth [~~third~~] degree by consanguinity as determined under Chapter 573, Government Code;

(B)  an adult relative of the alleged father of the child if the department has a reasonable basis to believe the alleged father is the child's biological father; or

(C)  identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307; and

(2)  may provide information as prescribed by this section to each adult the department is able to identify and locate who has a long-standing and significant relationship with the child.

SECTION 4.  Section 262.114, Family Code, is amended by adding Subsection (d) to read as follows:

(d)  In making a placement decision for a child, the department shall 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.  This Act takes effect September 1, 2021.

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