87R1785 MCK-D

By:  Hughes S.B. No. 190

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1.  Section 161.001(c), Family Code, is amended to read as follows:

(c)  Evidence of one or more of the following does not constitute clear and convincing evidence sufficient for a court to [~~A court may not~~] make a finding under Subsection (b) and order termination of the parent-child relationship [~~based on evidence that the parent~~]:

(1)  the parent homeschooled the child;

(2)  the parent is economically disadvantaged;

(3)  the parent has been charged with a nonviolent misdemeanor offense other than:

(A)  an offense under Title 5, Penal Code;

(B)  an offense under Title 6, Penal Code; or

(C)  an offense that involves family violence, as defined by Section 71.004 of this code;

(4)  the parent provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; [~~or~~]

(5)  the parent declined immunization for the child for reasons of conscience, including a religious belief; or

(6)  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.

SECTION 2.  Section 161.101, Family Code, is amended to read as follows:

Sec. 161.101.  PETITION ALLEGATIONS; PETITION AND MOTION REQUIREMENTS. (a) A petition for the termination of the parent-child relationship is sufficient without the necessity of specifying the underlying facts if the petition alleges in the statutory language the ground for the termination and that termination is in the best interest of the child.

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

SECTION 3.  Section 261.001(4), Family Code, is amended to read as follows:

(4)  "Neglect" means 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 to the child's physical health or safety and:

(A)  includes:

(i)  the leaving of a child in a situation where the child would be exposed to an immediate danger [~~a substantial risk~~] of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii)  the following acts or omissions by a person:

(a)  placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger [~~a substantial risk~~] of [~~immediate~~] harm to the child;

(b)  failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger [~~a substantial risk~~] of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c)  the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(d)  placing a child in or failing to remove the child from a situation in which the child would be exposed to an immediate danger [~~a substantial risk~~] of sexual conduct harmful to the child; or

(e)  placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child;

(iii)  the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(iv)  a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B)  does not include:

(i)  the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(a) [~~(i)~~]  the child has a severe emotional disturbance;

(b) [~~(ii)~~]  the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(c) [~~(iii)~~]  the person has exhausted all reasonable means available to the person to obtain the mental health services described by Sub-subparagraph (b); or

(ii)  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 [~~Subparagraph (ii)~~].

SECTION 4.  Section 262.116(a), Family Code, is amended to read as follows:

(a)  The Department of Family and Protective Services may not take possession of a child under this subchapter based on evidence that the parent:

(1)  homeschooled the child;

(2)  is economically disadvantaged;

(3)  has been charged with a nonviolent misdemeanor offense other than:

(A)  an offense under Title 5, Penal Code;

(B)  an offense under Title 6, Penal Code; or

(C)  an offense that involves family violence, as defined by Section 71.004 of this code;

(4)  provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; [~~or~~]

(5)  declined immunization for the child for reasons of conscience, including a religious belief; or

(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.

SECTION 5.  Section 262.201, Family Code, is amended by amending Subsections (g), (h), (j), and (n) and adding Subsections (g-1), (j-1), and (q) 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 from whom the child is removed 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 a substantial risk of a continuing danger if the child is returned home.

(g-1)  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, the court shall order possession of the child by that person unless the court finds, specific to each person entitled to possession, that:

(1)  the person cannot be located after the exercise of due diligence by the Department of Family and Protective Services, 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 or 20A.03, Penal Code.

(h)  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) [~~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, with respect to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession from whom the Department of Family and Protective Services is seeking removal, [~~sufficient evidence 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 continuation of the child in the person's 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, were made to prevent or eliminate the need for the removal of the child.

(j-1)  In a suit filed under Section 262.113, if the court orders the removal of the child under Subsection (j) and finds that another parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession did not cause the continuing danger to the physical health or safety of the child or was not the perpetrator of the neglect or abuse alleged in the suit, the court shall order possession of the child by that person unless the court finds, specific to each person entitled to possession, that:

(1)  the person cannot be located after the exercise of due diligence by the Department of Family and Protective Services 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 or 20A.03, Penal Code.

(n)  If the [~~The~~] court does not order possession of [~~shall place~~] a child by a [~~removed from the child's custodial parent with the child's noncustodial~~] parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession under Subsection (g), (g-1), (j), or (j-1), the court shall place the child [~~or~~] with a relative of the child [~~if placement with the noncustodial parent is inappropriate,~~] unless the court finds that the placement with [~~the noncustodial parent or~~] a relative is not in the best interest of the child.

(q)  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, the Department of Family and Protective Services shall notify the court and request a hearing to determine whether the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian is entitled to possession of the child under Subsection (g-1) or (j-1).

SECTION 6.  Section 263.002, Family Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c)  At each permanency hearing before the final order, the court shall review the placement of each child in the temporary managing conservatorship of the department who has not been returned to the child's home. At the end of the hearing, the court shall order the department to return the child to the child's parent or parents unless the court finds, with respect to each parent, that:

(1)  there is a continuing danger to the physical health or safety of the child; and

(2)  returning the child to the child's parent or parents [~~The court shall make a finding on whether returning the child to the child's home is safe and appropriate, whether the return is in the best interest of the child, and whether it~~] is contrary to the welfare of the child [~~for the child to return home~~].

(d)  This section does not prohibit the court from rendering an order under Section 263.403.

SECTION 7.  Subchapter E, Chapter 263, Family Code, is amended by adding Section 263.4011 to read as follows:

Sec. 263.4011.  RENDERING FINAL ORDER; EXTENSION. (a) On timely commencement of the trial on the merits under Section 263.401, the court shall render a final order not later than the 90th day after the date the trial commences.

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

(c)  If the court finds that extraordinary circumstances necessitate extending the 90-day period under Subsection (a), the court may grant one extension of that date for not longer than 30 days. The court shall render a written order:

(1)  specifying the grounds on which the extension is granted; and

(2)  requiring a final order to be rendered not later than the 30th day after the date the extension is granted.

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

SECTION 8.  Section 263.403(a-1), Family Code, is amended to read as follows:

(a-1)  Unless the court has granted an extension under Section 263.401(b), the department or the parent may request the court to retain jurisdiction for an additional six months as necessary for a parent to complete the remaining requirements under [~~in~~] a service plan [~~and specified~~] in a transition monitored return under Subsection (a)(2)(B) [~~the temporary order that are mandatory for the child's return~~].

SECTION 9.  Section 264.203, Family Code, is amended to read as follows:

Sec. 264.203.  REQUIRED PARTICIPATION. (a) The department may file a suit requesting [~~Except as provided by Subsection (d),~~] the court to render a temporary [~~on request of the department may~~] order requiring the parent, managing conservator, guardian, or other member of the [~~subject~~] child's household to:

(1)  participate in the services for which the department makes a referral or services the department provides or purchases for:

(A)  alleviating the effects of the abuse or neglect that has occurred; [~~or~~]

(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 [~~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)  permit the child and any siblings of the child to receive the services.

(b)  A suit requesting an order under this section may be filed in a court with jurisdiction to hear the suit in the county in which the child is located [~~The department may 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~~].

(c)  Except as otherwise provided by this subchapter, the suit is governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit [~~If the person ordered to participate in the services fails to follow the court's order, the court may 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~~].

(d)  The petition shall 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 the department [~~If the court does not order the person to participate, the court in writing shall specify the reasons for not ordering participation~~].

(e)  In a suit filed under this section, the court may render a temporary restraining order as provided by Section 105.001.

(f)  The court shall 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)  The court shall 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. The attorney ad litem for the child shall have the powers and duties of an attorney ad litem for a child under Chapter 107.

(h)  The court shall 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. The attorney ad litem for the parent shall have the powers and duties of an attorney ad litem for a parent under Section 107.0131.

(i)  Before commencement of the hearing, the court shall inform each parent of:

(1)  the parent's right to be represented by an attorney; and

(2)  for a parent who is indigent and appears in opposition to the motion, the parent's right to a court-appointed attorney.

(j)  If a parent claims indigence, the court shall require the parent to complete and file with the court an affidavit of indigence. The court may consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the court determines the parent is indigent, the attorney ad litem appointed to represent the interests of the parent may continue the representation. If the court determines the parent is not indigent, the court shall discharge the attorney ad litem from the appointment after the hearing and shall order the parent to pay the cost of the attorney ad litem's representation.

(k)  The court may, for good cause shown, 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)  An order may be rendered under this section only after notice and hearing.

(m)  At the conclusion of the hearing, the court shall deny the petition unless the court finds by a preponderance of evidence that:

(1)  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

(2)  services are necessary to ensure the physical health or safety of the child.

(n)  If the court renders an order granting the petition, the court shall:

(1)  state its findings in the order;

(2)  make appropriate temporary orders under Chapter 105 necessary to ensure the safety of the child; and

(3)  order the participation in specific services narrowly tailored to address the findings made by the court under Subsection (m).

(o)  If the court 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, the court may not require that person to participate in services ordered under Subsection (n).

(p)  Not later than the 90th day after the date the court renders an order under this section, the court shall 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. The court shall set subsequent review hearings every 90 days to review the continued need for the order.

(q)  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)  The court may extend an order rendered under this section on a showing by the department of a continuing need for the order, after notice and hearing. Except as provided by Subsection (s), the court may extend the order only one time for not more than 180 days.

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

(1)  the court finds that:

(A)  the extension is necessary to allow the person required to participate in services under the plan of service time to complete those services;

(B)  the department made a good faith effort to timely provide the services to the person;

(C)  the person made a good faith effort to complete the services; and

(D)  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)  At any time, a person affected by the order may request the court to terminate the order. The court shall terminate the order on finding the order is no longer needed.

SECTION 10.  Section 161.101, Family Code, as amended by this Act, applies only to a petition or motion filed by the Department of Family and Protective Services on or after the effective date of this Act. A petition or motion filed by the department 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 11.  The changes in law made by this Act apply only to a suit filed by the Department of Family and Protective Services on or after the effective date of this Act. A suit filed by the department 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 12.  This Act takes effect September 1, 2021.