

By: Frank

H.B. No. 567

Substitute the following for H.B. No. 567:

By: Talarico

C.S.H.B. No. 567

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the procedures and grounds for terminating the  
3 parent-child relationship, for taking possession of a child, and  
4 for certain hearings in a suit affecting the parent-child  
5 relationship involving the Department of Family and Protective  
6 Services.

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

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

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

15 (1) the parent homeschooled the child;  
16 (2) the parent is economically disadvantaged;  
17 (3) the parent has been charged with a nonviolent  
18 misdemeanor offense other than:

19 (A) an offense under Title 5, Penal Code;  
20 (B) an offense under Title 6, Penal Code; or  
21 (C) an offense that involves family violence, as  
22 defined by Section 71.004 of this code;

23 (4) the parent provided or administered low-THC  
24 cannabis to a child for whom the low-THC cannabis was prescribed

1 under Chapter 169, Occupations Code; [~~or~~]

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

4 (6) the parent allowed the child to engage in  
5 independent activities that are appropriate and typical for the  
6 child's level of maturity, physical condition, developmental  
7 abilities, or culture.

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

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

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

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

22 (4) "Neglect" means an act or failure to act by a  
23 person responsible for a child's care, custody, or welfare  
24 evidencing the person's blatant disregard for the consequences of  
25 the act or failure to act that results in harm to the child or that  
26 creates an immediate danger to the child's physical health or  
27 safety and:

1 (A) includes:

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

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

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

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

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

27 (d) placing a child in or failing to

1 remove the child from a situation in which the child would be  
2 exposed to an immediate danger [~~a substantial risk~~] of sexual  
3 conduct harmful to the child; or

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

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

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

22 (B) does not include:

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

27 (a) [~~(i)~~] the child has a severe

1 emotional disturbance;

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

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

9 (ii) allowing the child to engage in  
10 independent activities that are appropriate and typical for the  
11 child's level of maturity, physical condition, developmental  
12 abilities, or culture [~~Subparagraph (ii)~~].

13 SECTION 4. Section [262.116](#)(a), Family Code, is amended to  
14 read as follows:

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

- 18 (1) homeschooled the child;  
19 (2) is economically disadvantaged;  
20 (3) has been charged with a nonviolent misdemeanor  
21 offense other than:

- 22 (A) an offense under Title 5, Penal Code;  
23 (B) an offense under Title 6, Penal Code; or  
24 (C) an offense that involves family violence, as  
25 defined by Section [71.004](#) of this code;

26 (4) provided or administered low-THC cannabis to a  
27 child for whom the low-THC cannabis was prescribed under Chapter

1 169, Occupations Code; ~~[or]~~

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

4 (6) allowed the child to engage in independent  
5 activities that are appropriate and typical for the child's level  
6 of maturity, physical condition, developmental abilities, or  
7 culture; or

8 (7) tested positive for marihuana, unless the  
9 department has evidence that the parent's use of marihuana has  
10 caused significant impairment to the child's physical or mental  
11 health or emotional development.

12 SECTION 5. Section 262.201, Family Code, is amended by  
13 amending Subsections (e), (g), (h), and (n) and adding Subsections  
14 (g-1) and (q) to read as follows:

15 (e) The court may, for good cause shown, postpone the full  
16 adversary hearing for not more than seven days from the date of the  
17 attorney's appointment to provide the attorney time to respond to  
18 the petition and prepare for the hearing. The court may shorten or  
19 lengthen the extension granted under this subsection if the parent  
20 and the appointed attorney agree in writing. If the court postpones  
21 the full adversary hearing, the court shall extend a temporary  
22 order, temporary restraining order, or attachment issued by the  
23 court under Section 262.102(a) ~~[or Section 262.1131]~~ for the  
24 protection of the child until the date of the rescheduled full  
25 adversary hearing.

26 (g) In a suit filed under Section 262.101 or 262.105, at the  
27 conclusion of the full adversary hearing, the court shall order the

1 return of the child to the parent, managing conservator, possessory  
2 conservator, guardian, caretaker, or custodian entitled to  
3 possession from whom the child is removed unless the court finds  
4 sufficient evidence to satisfy a person of ordinary prudence and  
5 caution that:

6 (1) there was a danger to the physical health or safety  
7 of the child, including a danger that the child would be a victim of  
8 trafficking under Section 20A.02 or 20A.03, Penal Code, which was  
9 caused by an act or failure to act of the person entitled to  
10 possession and for the child to remain in the home is contrary to  
11 the welfare of the child;

12 (2) the urgent need for protection required the  
13 immediate removal of the child and reasonable efforts, consistent  
14 with the circumstances and providing for the safety of the child,  
15 were made to eliminate or prevent the child's removal; and

16 (3) reasonable efforts have been made to enable the  
17 child to return home, but there is a substantial risk of a  
18 continuing danger if the child is returned home.

19 (g-1) In a suit filed under Section 262.101 or 262.105, if  
20 the court does not order the return of the child under Subsection  
21 (g) and finds that another parent, managing conservator, possessory  
22 conservator, guardian, caretaker, or custodian entitled to  
23 possession did not cause the immediate danger to the physical  
24 health or safety of the child or was not the perpetrator of the  
25 neglect or abuse alleged in the suit, the court shall order  
26 possession of the child by that person unless the court finds,  
27 specific to each person entitled to possession, that:

1           (1) the person cannot be located after the exercise of  
2 due diligence by the Department of Family and Protective Services,  
3 or the person is unable or unwilling to take possession of the  
4 child; or

5           (2) reasonable efforts have been made to enable the  
6 person's possession of the child, but possession by that person  
7 presents a continuing danger to the physical health or safety of the  
8 child caused by an act or failure to act of the person, including a  
9 danger that the child would be a victim of trafficking under Section  
10 20A.02 or 20A.03, Penal Code.

11           (h) In a suit filed under Section 262.101 or 262.105, if the  
12 court finds sufficient evidence to make the applicable finding  
13 under Subsection (g) or (g-1) [~~satisfy a person of ordinary~~  
14 prudence and caution that there is a continuing danger to the  
15 physical health or safety of the child and for the child to remain  
16 in the home is contrary to the welfare of the child], the court  
17 shall issue an appropriate temporary order under Chapter 105.

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

27           (q) On receipt of a written request for possession of the



1 child from a parent, managing conservator, possessory conservator,  
2 guardian, caretaker, or custodian entitled to possession of the  
3 child who was not located before the adversary hearing, the  
4 Department of Family and Protective Services shall notify the court  
5 and request a hearing to determine whether the parent, managing  
6 conservator, possessory conservator, guardian, caretaker, or  
7 custodian is entitled to possession of the child under Subsection  
8 (g-1).

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

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

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

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

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

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

3 Sec. 263.4011. RENDERING FINAL ORDER; EXTENSION. (a) On  
4 timely commencement of the trial on the merits under Section  
5 263.401, the court shall render a final order not later than the  
6 90th day after the date the trial commences.

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

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

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

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

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

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

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

1 ~~mandatory for the child's return~~].

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

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

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

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

14 (B) reducing a continuing danger to the physical  
15 health or safety of the child caused by an act or failure to act of  
16 the parent, managing conservator, guardian, or other member of the  
17 child's household [~~the reasonable likelihood that the child may be~~  
18 ~~abused or neglected in the immediate or foreseeable future~~]; or

19 (C) reducing a substantial risk of abuse or  
20 neglect caused by an act or failure to act of the parent, managing  
21 conservator, guardian, or member of the child's household; and

22 (2) permit the child and any siblings of the child to  
23 receive the services.

24 (b) A suit requesting an order under this section may be  
25 filed in a court with jurisdiction to hear the suit in the county in  
26 which the child is located [~~The department may request the court to~~  
27 ~~order the parent, managing conservator, guardian, or other member~~

1 ~~of the child's household to participate in the services whether the~~  
2 ~~child resides in the home or has been removed from the home].~~

3 (c) Except as otherwise provided by this subchapter, the  
4 suit is governed by the Texas Rules of Civil Procedure applicable to  
5 the filing of an original lawsuit [~~If the person ordered to~~  
6 ~~participate in the services fails to follow the court's order, the~~  
7 ~~court may impose appropriate sanctions in order to protect the~~  
8 ~~health and safety of the child, including the removal of the child~~  
9 ~~as specified by Chapter 262].~~

10 (d) The petition shall be supported by a sworn affidavit by  
11 a person based on personal knowledge and stating facts sufficient  
12 to support a finding that:

13 (1) the child has been a victim of abuse or neglect or  
14 is at substantial risk of abuse or neglect; and

15 (2) there is a continuing danger to the physical  
16 health or safety of the child caused by an act or failure to act of  
17 the parent, managing conservator, guardian, or other member of the  
18 child's household unless that person participates in services  
19 requested by the department [~~If the court does not order the person~~  
20 ~~to participate, the court in writing shall specify the reasons for~~  
21 ~~not ordering participation].~~

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

24 (f) The court shall hold a hearing on the petition not later  
25 than the 14th day after the date the petition is filed unless the  
26 court finds good cause for extending that date for not more than 14  
27 days.

1       (g) The court shall appoint an attorney ad litem to  
2 represent the interests of the child immediately after the filing  
3 but before the hearing to ensure adequate representation of the  
4 child. The attorney ad litem for the child shall have the powers  
5 and duties of an attorney ad litem for a child under Chapter 107.

6       (h) The court shall appoint an attorney ad litem to  
7 represent the interests of a parent for whom participation in  
8 services is being requested immediately after the filing but before  
9 the hearing to ensure adequate representation of the parent. The  
10 attorney ad litem for the parent shall have the powers and duties of  
11 an attorney ad litem for a parent under Section 107.0131.

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

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

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

19       (j) If a parent claims indigence, the court shall require  
20 the parent to complete and file with the court an affidavit of  
21 indigence. The court may consider additional evidence to determine  
22 whether the parent is indigent, including evidence relating to the  
23 parent's income, source of income, assets, property ownership,  
24 benefits paid in accordance with a federal, state, or local public  
25 assistance program, outstanding obligations, and necessary  
26 expenses and the number and ages of the parent's dependents. If the  
27 court determines the parent is indigent, the attorney ad litem

1 appointed to represent the interests of the parent may continue the  
2 representation. If the court determines the parent is not  
3 indigent, the court shall discharge the attorney ad litem from the  
4 appointment after the hearing and shall order the parent to pay the  
5 cost of the attorney ad litem's representation.

6 (k) The court may, for good cause shown, postpone any  
7 subsequent proceedings for not more than seven days after the date  
8 of the attorney ad litem's discharge to allow the parent to hire an  
9 attorney or to provide the parent's attorney time to prepare for the  
10 subsequent proceeding.

11 (l) An order may be rendered under this section only after  
12 notice and hearing.

13 (m) At the conclusion of the hearing, the court shall deny  
14 the petition unless the court finds sufficient evidence to satisfy  
15 a person of ordinary prudence and caution that:

16 (1) abuse or neglect has occurred or there is a  
17 substantial risk of abuse or neglect or continuing danger to the  
18 physical health or safety of the child caused by an act or failure  
19 to act of the parent, managing conservator, guardian, or other  
20 member of the child's household; and

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

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

25 (1) state its findings in the order;

26 (2) make appropriate temporary orders under Chapter  
27 105 necessary to ensure the safety of the child; and

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

4           (o) If the court finds that a parent, managing conservator,  
5 guardian, or other member of the child's household did not cause the  
6 continuing danger to the physical health or safety of the child or  
7 the substantial risk of abuse or neglect, or was not the perpetrator  
8 of the abuse or neglect alleged, the court may not require that  
9 person to participate in services ordered under Subsection (n).

10           (p) Not later than the 90th day after the date the court  
11 renders an order under this section, the court shall hold a hearing  
12 to review the status of each person required to participate in the  
13 services and the child and the services provided, purchased, or  
14 referred. The court shall set subsequent review hearings every 90  
15 days to review the continued need for the order.

16           (q) An order rendered under this section expires on the  
17 180th day after the date the order is signed unless the court  
18 extends the order as provided by Subsection (r) or (s).

19           (r) The court may extend an order rendered under this  
20 section on a showing by the department of a continuing need for the  
21 order, after notice and hearing. Except as provided by Subsection  
22 (s), the court may extend the order only one time for not more than  
23 180 days.

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

26           (1) the court finds that:

27                   (A) the extension is necessary to allow the

1 person required to participate in services under the plan of  
2 service time to complete those services;

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

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

7 (D) the completion of the services is necessary  
8 to ensure the physical health and safety of the child; and

9 (2) the extension is requested by the person or the  
10 person's attorney.

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

14 SECTION 10. The following provisions of the Family Code are  
15 repealed:

16 (1) Section 262.113;

17 (2) Section 262.1131; and

18 (3) Sections 262.201(b) and (j).

19 SECTION 11. Section 161.101, Family Code, as amended by  
20 this Act, applies only to a petition or motion filed by the  
21 Department of Family and Protective Services on or after the  
22 effective date of this Act. A petition or motion filed by the  
23 department before that date is governed by the law in effect on the  
24 date the petition or motion was filed, and the former law is  
25 continued in effect for that purpose.

26 SECTION 12. The changes in law made by this Act apply only  
27 to a suit filed by the Department of Family and Protective Services



1 on or after the effective date of this Act. A suit filed by the  
2 department before that date is governed by the law in effect on the  
3 date the suit was filed, and the former law is continued in effect  
4 for that purpose.

5 SECTION 13. This Act takes effect September 1, 2021.