

By: Frank

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; or

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.

8 SECTION 5. Section 262.201, Family Code, is amended by
9 amending Subsections (g), (h), (j), and (n) and adding Subsections
10 (g-1), (j-1), and (q) to read as follows:

11 (g) In a suit filed under Section 262.101 or 262.105, at the
12 conclusion of the full adversary hearing, the court shall order the
13 return of the child to the parent, managing conservator, possessory
14 conservator, guardian, caretaker, or custodian entitled to
15 possession from whom the child is removed unless the court finds
16 sufficient evidence to satisfy a person of ordinary prudence and
17 caution that:

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

24 (2) the urgent need for protection required the
25 immediate removal of the child and reasonable efforts, consistent
26 with the circumstances and providing for the safety of the child,
27 were made to eliminate or prevent the child's removal; and

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

4 (g-1) In a suit filed under Section 262.101 or 262.105, if
5 the court does not order the return of the child under Subsection
6 (g) and finds that another parent, managing conservator, possessory
7 conservator, guardian, caretaker, or custodian entitled to
8 possession did not cause the immediate danger to the physical
9 health or safety of the child or was not the perpetrator of the
10 neglect or abuse alleged in the suit, the court shall order
11 possession of the child by that person unless the court finds,
12 specific to each person entitled to possession, that:

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

17 (2) reasonable efforts have been made to enable the
18 person's possession of the child, but possession by that person
19 presents a continuing danger to the physical health or safety of the
20 child caused by an act or failure to act of the person, including a
21 danger that the child would be a victim of trafficking under Section
22 20A.02 or 20A.03, Penal Code.

23 (h) In a suit filed under Section 262.101 or 262.105, if the
24 court finds sufficient evidence to make the applicable finding
25 under Subsection (g) or (g-1) [~~satisfy a person of ordinary~~
26 prudence and caution that there is a continuing danger to the
27 physical health or safety of the child and for the child to remain

1 ~~in the home is contrary to the welfare of the child~~], the court
2 shall issue an appropriate temporary order under Chapter 105.

3 (j) In a suit filed under Section 262.113, at the conclusion
4 of the full adversary hearing, the court shall issue an appropriate
5 temporary order under Chapter 105 if the court finds, with respect
6 to the parent, managing conservator, possessory conservator,
7 guardian, caretaker, or custodian entitled to possession from whom
8 the Department of Family and Protective Services is seeking
9 removal, [~~sufficient evidence to satisfy a person of ordinary~~
10 ~~prudence and caution~~] that:

11 (1) there is a continuing danger to the physical
12 health or safety of the child caused by an act or failure to act of
13 the person entitled to possession of the child and continuation of
14 the child in the person's home would be contrary to the child's
15 welfare; and

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

19 (j-1) In a suit filed under Section 262.113, if the court
20 orders the removal of the child under Subsection (j) and finds that
21 another parent, managing conservator, possessory conservator,
22 guardian, caretaker, or custodian entitled to possession did not
23 cause the continuing danger to the physical health or safety of the
24 child or was not the perpetrator of the neglect or abuse alleged in
25 the suit, the court shall order possession of the child by that
26 person unless the court finds, specific to each person entitled to
27 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 (n) If the [The] court does not order possession of [shall
12 place] a child by a [removed from the child's custodial parent with
13 the child's noncustodial] parent, managing conservator, possessory
14 conservator, guardian, caretaker, or custodian entitled to
15 possession under Subsection (g), (g-1), (j), or (j-1), the court
16 shall place the child [or] with a relative of the child [if
17 placement with the noncustodial parent is inappropriate,] unless
18 the court finds that the placement with [the noncustodial parent
19 or] a relative is not in the best interest of the child.

20 (g) On receipt of a written request for possession of the
21 child from a parent, managing conservator, possessory conservator,
22 guardian, caretaker, or custodian entitled to possession of the
23 child who was not located before the adversary hearing, the
24 Department of Family and Protective Services shall notify the court
25 and request a hearing to determine whether the parent, managing
26 conservator, possessory conservator, guardian, caretaker, or
27 custodian is entitled to possession of the child under Subsection

1 (g-1) or (j-1).

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

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

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

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

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

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

23 Sec. 263.4011. RENDERING FINAL ORDER; EXTENSION. (a) On
24 timely commencement of the trial on the merits under Section
25 263.401, the court shall render a final order not later than the
26 90th day after the date the trial commences.

27 (b) The 90-day period for rendering a final order under

1 Subsection (a) is not tolled for any recess during the trial.

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

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

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

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

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

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

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

24 Sec. 264.203. REQUIRED PARTICIPATION. (a) The department
25 may file a suit requesting [Except as provided by Subsection (d),]
26 the court to render a temporary [on request of the department may]
27 order requiring the parent, managing conservator, guardian, or

1 other member of the [~~subject~~] child's household to:

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

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

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

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

15 (2) permit the child and any siblings of the child to
16 receive the services.

17 (b) A suit requesting an order under this section may be
18 filed in a court with jurisdiction to hear the suit in the county in
19 which the child is located [~~The department may request the court to~~
20 ~~order the parent, managing conservator, guardian, or other member~~
21 ~~of the child's household to participate in the services whether the~~
22 ~~child resides in the home or has been removed from the home~~].

23 (c) Except as otherwise provided by this subchapter, the
24 suit is governed by the Texas Rules of Civil Procedure applicable to
25 the filing of an original lawsuit [~~If the person ordered to~~
26 ~~participate in the services fails to follow the court's order, the~~
27 ~~court may impose appropriate sanctions in order to protect the~~

1 ~~health and safety of the child, including the removal of the child~~
2 ~~as specified by Chapter 262].~~

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

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

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

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

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

21 (g) The court shall appoint an attorney ad litem to
22 represent the interests of the child immediately after the filing
23 but before the hearing to ensure adequate representation of the
24 child. The attorney ad litem for the child shall have the powers
25 and duties of an attorney ad litem for a child under Chapter 107.

26 (h) The court shall appoint an attorney ad litem to
27 represent the interests of a parent for whom participation in

1 services is being requested immediately after the filing but before
2 the hearing to ensure adequate representation of the parent. The
3 attorney ad litem for the parent shall have the powers and duties of
4 an attorney ad litem for a parent under Section 107.0131.

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

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

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

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

26 (k) The court may, for good cause shown, postpone any
27 subsequent proceedings for not more than seven days after the date

1 of the attorney ad litem's discharge to allow the parent to hire an
2 attorney or to provide the parent's attorney time to prepare for the
3 subsequent proceeding.

4 (1) An order may be rendered under this section only after
5 notice and hearing.

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

9 (1) abuse or neglect has occurred or there is a
10 substantial risk of abuse or neglect or continuing danger to the
11 physical health or safety of the child caused by an act or failure
12 to act of the parent, managing conservator, guardian, or other
13 member of the child's household; and

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

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

18 (1) state its findings in the order;

19 (2) make appropriate temporary orders under Chapter
20 105 necessary to ensure the safety of the child; and

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

24 (o) If the court finds that a parent, managing conservator,
25 guardian, or other member of the child's household did not cause the
26 continuing danger to the physical health or safety of the child or
27 the substantial risk of abuse or neglect, or was not the perpetrator

1 of the abuse or neglect alleged, the court may not require that
2 person to participate in services ordered under Subsection (n).

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

9 (q) An order rendered under this section expires on the
10 180th day after the date the order is signed unless the court
11 extends the order as provided by Subsection (r) or (s).

12 (r) The court may extend an order rendered under this
13 section on a showing by the department of a continuing need for the
14 order, after notice and hearing. Except as provided by Subsection
15 (s), the court may extend the order only one time for not more than
16 180 days.

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

19 (1) the court finds that:

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

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

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

27 (D) the completion of the services is necessary

1 to ensure the physical health and safety of the child; and

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

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

7 SECTION 10. Section 161.101, Family Code, as amended by
8 this Act, applies only to a petition or motion filed by the
9 Department of Family and Protective Services on or after the
10 effective date of this Act. A petition or motion filed by the
11 department before that date is governed by the law in effect on the
12 date the petition or motion was filed, and the former law is
13 continued in effect for that purpose.

14 SECTION 11. The changes in law made by this Act apply only
15 to a suit filed by the Department of Family and Protective Services
16 on or after the effective date of this Act. A suit filed by the
17 department before that date is governed by the law in effect on the
18 date the suit was filed, and the former law is continued in effect
19 for that purpose.

20 SECTION 12. This Act takes effect September 1, 2021.