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et al.

H.B. No. 2308

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures in certain suits affecting the parent-child
3 relationship filed by the Department of Family and Protective
4 Services.

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

6 SECTION 1. Section 262.101, Family Code, is amended to read
7 as follows:

8 Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF
9 CHILD. (a) An original suit filed by a governmental entity that
10 requests permission to take possession of a child without prior
11 notice and a hearing must be supported by an affidavit sworn to by a
12 person with personal knowledge and stating facts sufficient to
13 satisfy a person of ordinary prudence and caution that:

14 (1) there is an immediate danger to the physical
15 health or safety of the child or the child has been a victim of
16 neglect or sexual abuse;

17 (2) continuation in the home would be contrary to the
18 child's welfare;

19 (3) there is no time, consistent with the physical
20 health or safety of the child, for a full adversary hearing under
21 Subchapter C; ~~and~~

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

1 order issued under Title 4;

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

5 (A) was offered but refused;

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

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

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

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

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

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

25 (b) An agreed order under this section must contain the
26 following statement in boldface type and capital letters: "YOUR
27 AGREEMENT TO THIS ORDER IS NOT AN ADMISSION OF CHILD ABUSE OR

1 NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION
2 OF CHILD ABUSE OR NEGLECT."

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

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

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

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

15 (a) Before a court may, without prior notice and a hearing,
16 issue a temporary order for the conservatorship of a child under
17 Section 105.001(a)(1) or a temporary restraining order or
18 attachment of a child authorizing a governmental entity to take
19 possession of a child in a suit brought by a governmental entity,
20 the court must find that:

21 (1) there is an immediate danger to the physical
22 health or safety of the child or the child has been a victim of
23 neglect or sexual abuse;

24 (2) continuation in the home would be contrary to the
25 child's welfare;

26 (3) there is no time, consistent with the physical
27 health or safety of the child and the nature of the emergency, for a

1 full adversary hearing under Subchapter C; ~~and~~

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

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

9 (A) was offered but refused;

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

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

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

18 SECTION 4. Section 262.105, Family Code, is amended by
19 amending Subsection (b) and adding Subsection (c) to read as
20 follows:

21 (b) An original suit filed by a governmental entity after
22 taking possession of a child under Section 262.104 must be
23 supported by an affidavit stating facts sufficient to satisfy a
24 person of ordinary prudence and caution that:

25 (1) based on the affiant's personal knowledge or on
26 information furnished by another person corroborated by the
27 affiant's personal knowledge, one of the following circumstances

1 existed at the time the child was taken into possession:

2 (A) there was an immediate danger to the physical
3 health or safety of the child;

4 (B) the child was the victim of sexual abuse or of
5 trafficking under Section 20A.02 or 20A.03, Penal Code;

6 (C) the parent or person who had possession of
7 the child was using a controlled substance as defined by Chapter
8 481, Health and Safety Code, and the use constituted an immediate
9 danger to the physical health or safety of the child; or

10 (D) the parent or person who had possession of
11 the child permitted the child to remain on premises used for the
12 manufacture of methamphetamine; and

13 (2) based on the affiant's personal knowledge:

14 (A) continuation of the child in the home would
15 have been contrary to the child's welfare;

16 (B) there was no time, consistent with the
17 physical health or safety of the child, for a full adversary hearing
18 under Subchapter C; ~~and~~

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

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

26 (i) was offered but refused;

27 (ii) was not possible because there was no

1 time, consistent with the physical health or safety of the child and
2 the nature of the emergency, to conduct the caregiver evaluation;
3 or

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

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

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

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

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

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

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

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

1 child will be the victim of sexual abuse or of trafficking in the
2 future;

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

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

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

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

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

19 (A) was offered but refused;

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

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

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

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

3 Sec. 262.113. FILING SUIT WITHOUT TAKING POSSESSION OF
4 CHILD. (a) An original suit filed by a governmental entity that
5 requests to take possession of a child after notice and a hearing
6 must be supported by an affidavit sworn to by a person with personal
7 knowledge and stating facts sufficient to satisfy a person of
8 ordinary prudence and caution that:

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

14 (2) reasonable efforts, consistent with the
15 circumstances and providing for the safety of the child, have been
16 made to prevent or eliminate the need to remove the child from the
17 child's home.

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

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

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