

By: Gates

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. 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 caregiver under a
3 parental child safety placement agreement authorized by Subchapter
4 L, Chapter 264:

5 (A) was offered but refused; or

6 (B) would pose an immediate danger to the
7 physical health or safety of the child; and

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

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

13 Sec. 262.1016. AGREED ORDER FOR REMOVAL OF ALLEGED
14 PERPETRATOR. (a) An alleged perpetrator of abuse or neglect may
15 agree in writing to an order under Section 262.1015 requiring the
16 alleged perpetrator to leave the residence of the child. An
17 agreement under this section is subject to the approval of the
18 court.

19 (b) An agreed order under this section must contain the
20 following statement in boldface type and capital letters: "YOUR
21 AGREEMENT TO THIS ORDER IS NOT AN ADMISSION OF CHILD ABUSE OR
22 NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION
23 OF CHILD ABUSE OR NEGLECT."

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

27 (d) An agreed order under this section is enforceable

1 civilly or criminally but is not enforceable as a contract.

2 (e) At any time, a person affected by an agreed order under
3 this section may request the court to terminate the order. The court
4 shall terminate the agreed order on finding the order is no longer
5 needed.

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

8 (a) Before a court may, without prior notice and a hearing,
9 issue a temporary order for the conservatorship of a child under
10 Section 105.001(a)(1) or a temporary restraining order or
11 attachment of a child authorizing a governmental entity to take
12 possession of a child in a suit brought by a governmental entity,
13 the court must find 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 and the nature of the emergency, for a
21 full adversary hearing under 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
25 order issued under Title 4;

26 (5) placing the child with a caregiver under a
27 parental child safety placement agreement authorized by Subchapter

1 L, Chapter 264:

2 (A) was offered but refused; or

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

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

8 SECTION 4. Section 262.105(b), Family Code, is amended to
9 read as follows:

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

14 (1) based on the affiant's personal knowledge or on
15 information furnished by another person corroborated by the
16 affiant's personal knowledge, one of the following circumstances
17 existed at the time the child was taken into possession:

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

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

22 (C) the parent or person who had possession of
23 the child was using a controlled substance as defined by Chapter
24 481, Health and Safety Code, and the use constituted an immediate
25 danger to the physical health or safety of the child; or

26 (D) the parent or person who had possession of
27 the child permitted the child to remain on premises used for the

1 manufacture of methamphetamine; and

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

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

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

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

12 (D) placing the child with a caregiver under a
13 parental child safety placement agreement authorized by Subchapter
14 L, Chapter 264:

15 (i) was offered but refused; or

16 (ii) would pose an immediate danger to the
17 physical health or safety of the child; and

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

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

23 (a) The court shall order the return of the child at the
24 initial hearing regarding a child taken in possession without a
25 court order by a governmental entity unless the court is satisfied
26 that:

27 (1) the evidence shows that one of the following

1 circumstances exists:

2 (A) there is a continuing danger to the physical
3 health or safety of the child if the child is returned to the
4 parent, managing conservator, possessory conservator, guardian,
5 caretaker, or custodian who is presently entitled to possession of
6 the child;

7 (B) the child has been the victim of sexual abuse
8 or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one
9 or more occasions and that there is a substantial risk that the
10 child will be the victim of sexual abuse or of trafficking in the
11 future;

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

16 (D) the parent or person who has possession of
17 the child has permitted the child to remain on premises used for the
18 manufacture of methamphetamine;

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

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

25 (4) placing the child with a caregiver under a
26 parental child safety placement agreement authorized by Subchapter
27 L, Chapter 264:

1 (A) was offered but refused; or

2 (B) would pose an immediate danger to the
3 physical health or safety of the child; and

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

7 SECTION 6. Section 262.114(b), Family Code, is amended to
8 read as follows:

9 (b) Not later than 48 hours after taking possession of a
10 child under this subchapter, the [The] department shall [may] place
11 a child with a relative or other designated caregiver identified on
12 the proposed child placement resources form, including any adult
13 identified by the child, as long as the placement is safe and
14 available [if the department determines that the placement is in
15 the best interest of the child]. The department must complete the
16 background and criminal history check and conduct a preliminary
17 evaluation of the relative or other designated caregiver's home
18 before the child is placed with the relative or other designated
19 caregiver. The department may place the child with the relative or
20 designated caregiver before conducting the home study required
21 under Subsection (a). Not later than 48 hours after the time that
22 the child is placed with the relative or other designated
23 caregiver, the department shall begin the home study of the
24 relative or other designated caregiver. The department shall
25 complete the home study as soon as possible unless otherwise
26 ordered by a court. The department shall provide a copy of an
27 informational manual required under Section 261.3071 to the

1 relative or other designated caregiver at the time of the child's
2 placement.

3 SECTION 7. The changes in law made by this Act apply to a
4 suit affecting the parent-child relationship that is filed on or
5 after the effective date of this Act. A suit filed before the
6 effective date of this Act is governed by the law in effect on the
7 date that the suit is filed, and the former law is continued in
8 effect for that purpose.

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