

1-1 By: Gates, et al. (Senate Sponsor - Kolkhorst) H.B. No. 2308
 1-2 (In the Senate - Received from the House May 5, 2021;
 1-3 May 10, 2021, read first time and referred to Committee on Health &
 1-4 Human Services; May 20, 2021, reported favorably by the following
 1-5 vote: Yeas 8, Nays 0; May 20, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to procedures in certain suits affecting the parent-child
 1-20 relationship filed by the Department of Family and Protective
 1-21 Services.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 262.101, Family Code, is amended to read
 1-24 as follows:

1-25 Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF
 1-26 CHILD. (a) An original suit filed by a governmental entity that
 1-27 requests permission to take possession of a child without prior
 1-28 notice and a hearing must be supported by an affidavit sworn to by a
 1-29 person with personal knowledge and stating facts sufficient to
 1-30 satisfy a person of ordinary prudence and caution that:

1-31 (1) there is an immediate danger to the physical
 1-32 health or safety of the child or the child has been a victim of
 1-33 neglect or sexual abuse;

1-34 (2) continuation in the home would be contrary to the
 1-35 child's welfare;

1-36 (3) there is no time, consistent with the physical
 1-37 health or safety of the child, for a full adversary hearing under
 1-38 Subchapter C; ~~and~~

1-39 (4) the child would not be adequately protected in the
 1-40 child's home with an order for the removal of the alleged
 1-41 perpetrator under Section 262.1015 or 262.1016 or a protective
 1-42 order issued under Title 4;

1-43 (5) placing the child with a relative or designated
 1-44 caregiver or with a caregiver under a parental child safety
 1-45 placement agreement authorized by Subchapter L, Chapter 264:

1-46 (A) was offered but refused;

1-47 (B) was not possible because there was no time,
 1-48 consistent with the physical health or safety of the child and the
 1-49 nature of the emergency, to conduct the caregiver evaluation; or

1-50 (C) would pose an immediate danger to the
 1-51 physical health or safety of the child; and

1-52 (6) reasonable efforts, consistent with the
 1-53 circumstances and providing for the safety of the child, were made
 1-54 to prevent or eliminate the need for the removal of the child.

1-55 (b) The affidavit required by Subsection (a) must describe
 1-56 all reasonable efforts that were made to prevent or eliminate the
 1-57 need for the removal of the child.

1-58 SECTION 2. Subchapter B, Chapter 262, Family Code, is
 1-59 amended by adding Section 262.1016 to read as follows:

1-60 Sec. 262.1016. AGREED ORDER FOR REMOVAL OF ALLEGED
 1-61 PERPETRATOR. (a) An alleged perpetrator of abuse or neglect may

2-1 agree in writing to an order under Section 262.1015 requiring the
 2-2 alleged perpetrator to leave the residence of the child. An
 2-3 agreement under this section is subject to the approval of the
 2-4 court.

2-5 (b) An agreed order under this section must contain the
 2-6 following statement in boldface type and capital letters: "YOUR
 2-7 AGREEMENT TO THIS ORDER IS NOT AN ADMISSION OF CHILD ABUSE OR
 2-8 NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION
 2-9 OF CHILD ABUSE OR NEGLECT."

2-10 (c) An agreed order under this section may not be used
 2-11 against an alleged perpetrator as an admission of child abuse or
 2-12 neglect.

2-13 (d) An agreed order under this section is enforceable
 2-14 civilly or criminally but is not enforceable as a contract.

2-15 (e) At any time, a person affected by an agreed order under
 2-16 this section may request the court to terminate the order. The court
 2-17 shall terminate the agreed order on finding the order is no longer
 2-18 needed and terminating the order is in the best interest of the
 2-19 child.

2-20 SECTION 3. Section 262.102(a), Family Code, is amended to
 2-21 read as follows:

2-22 (a) Before a court may, without prior notice and a hearing,
 2-23 issue a temporary order for the conservatorship of a child under
 2-24 Section 105.001(a)(1) or a temporary restraining order or
 2-25 attachment of a child authorizing a governmental entity to take
 2-26 possession of a child in a suit brought by a governmental entity,
 2-27 the court must find that:

2-28 (1) there is an immediate danger to the physical
 2-29 health or safety of the child or the child has been a victim of
 2-30 neglect or sexual abuse;

2-31 (2) continuation in the home would be contrary to the
 2-32 child's welfare;

2-33 (3) there is no time, consistent with the physical
 2-34 health or safety of the child and the nature of the emergency, for a
 2-35 full adversary hearing under Subchapter C; ~~and~~

2-36 (4) the child would not be adequately protected in the
 2-37 child's home with an order for the removal of the alleged
 2-38 perpetrator under Section 262.1015 or 262.1016 or a protective
 2-39 order issued under Title 4;

2-40 (5) placing the child with a relative or designated
 2-41 caregiver or with a caregiver under a parental child safety
 2-42 placement agreement authorized by Subchapter L, Chapter 264:

2-43 (A) was offered but refused;

2-44 (B) was not possible because there was no time,
 2-45 consistent with the physical health or safety of the child and the
 2-46 nature of the emergency, to conduct the caregiver evaluation; or

2-47 (C) would pose an immediate danger to the
 2-48 physical health or safety of the child; and

2-49 (6) reasonable efforts, consistent with the
 2-50 circumstances and providing for the safety of the child, were made
 2-51 to prevent or eliminate the need for removal of the child.

2-52 SECTION 4. Section 262.105, Family Code, is amended by
 2-53 amending Subsection (b) and adding Subsection (c) to read as
 2-54 follows:

2-55 (b) An original suit filed by a governmental entity after
 2-56 taking possession of a child under Section 262.104 must be
 2-57 supported by an affidavit stating facts sufficient to satisfy a
 2-58 person of ordinary prudence and caution that:

2-59 (1) based on the affiant's personal knowledge or on
 2-60 information furnished by another person corroborated by the
 2-61 affiant's personal knowledge, one of the following circumstances
 2-62 existed at the time the child was taken into possession:

2-63 (A) there was an immediate danger to the physical
 2-64 health or safety of the child;

2-65 (B) the child was the victim of sexual abuse or of
 2-66 trafficking under Section 20A.02 or 20A.03, Penal Code;

2-67 (C) the parent or person who had possession of
 2-68 the child was using a controlled substance as defined by Chapter
 2-69 481, Health and Safety Code, and the use constituted an immediate

3-1 danger to the physical health or safety of the child; or
 3-2 (D) the parent or person who had possession of
 3-3 the child permitted the child to remain on premises used for the
 3-4 manufacture of methamphetamine; and
 3-5 (2) based on the affiant's personal knowledge:
 3-6 (A) continuation of the child in the home would
 3-7 have been contrary to the child's welfare;
 3-8 (B) there was no time, consistent with the
 3-9 physical health or safety of the child, for a full adversary hearing
 3-10 under Subchapter C; ~~and~~
 3-11 (C) the child would not be adequately protected
 3-12 in the child's home with an order for the removal of the alleged
 3-13 perpetrator under Section 262.1015 or 262.1016 or a protective
 3-14 order issued under Title 4;
 3-15 (D) placing the child with a relative or
 3-16 designated caregiver or with a caregiver under a parental child
 3-17 safety placement agreement authorized by Subchapter L, Chapter 264:
 3-18 (i) was offered but refused;
 3-19 (ii) was not possible because there was no
 3-20 time, consistent with the physical health or safety of the child and
 3-21 the nature of the emergency, to conduct the caregiver evaluation;
 3-22 or
 3-23 (iii) would pose an immediate danger to the
 3-24 physical health or safety of the child; and
 3-25 (E) reasonable efforts, consistent with the
 3-26 circumstances and providing for the safety of the child, were made
 3-27 to prevent or eliminate the need for the removal of the child.
 3-28 (c) The affidavit required by Subsection (b) must describe
 3-29 all reasonable efforts that were made to prevent or eliminate the
 3-30 need for the removal of the child.
 3-31 SECTION 5. Section 262.107(a), Family Code, is amended to
 3-32 read as follows:
 3-33 (a) The court shall order the return of the child at the
 3-34 initial hearing regarding a child taken in possession without a
 3-35 court order by a governmental entity unless the court is satisfied
 3-36 that:
 3-37 (1) the evidence shows that one of the following
 3-38 circumstances exists:
 3-39 (A) there is a continuing danger to the physical
 3-40 health or safety of the child if the child is returned to the
 3-41 parent, managing conservator, possessory conservator, guardian,
 3-42 caretaker, or custodian who is presently entitled to possession of
 3-43 the child;
 3-44 (B) the child has been the victim of sexual abuse
 3-45 or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one
 3-46 or more occasions and that there is a substantial risk that the
 3-47 child will be the victim of sexual abuse or of trafficking in the
 3-48 future;
 3-49 (C) the parent or person who has possession of
 3-50 the child is currently using a controlled substance as defined by
 3-51 Chapter 481, Health and Safety Code, and the use constitutes an
 3-52 immediate danger to the physical health or safety of the child; or
 3-53 (D) the parent or person who has possession of
 3-54 the child has permitted the child to remain on premises used for the
 3-55 manufacture of methamphetamine;
 3-56 (2) continuation of the child in the home would be
 3-57 contrary to the child's welfare; ~~and~~
 3-58 (3) the child would not be adequately protected in the
 3-59 child's home with an order for the removal of the alleged
 3-60 perpetrator under Section 262.1015 or 262.1016 or a protective
 3-61 order issued under Title 4;
 3-62 (4) placing the child with a relative or designated
 3-63 caregiver or with a caregiver under a parental child safety
 3-64 placement agreement authorized by Subchapter L, Chapter 264:
 3-65 (A) was offered but refused;
 3-66 (B) was not possible because there was no time,
 3-67 consistent with the physical health or safety of the child and the
 3-68 nature of the emergency, to conduct the caregiver evaluation; or
 3-69 (C) would pose an immediate danger to the

4-1 physical health or safety of the child; and
4-2 (5) reasonable efforts, consistent with the
4-3 circumstances and providing for the safety of the child, were made
4-4 to prevent or eliminate the need for removal of the child.

4-5 SECTION 6. Section 262.113, Family Code, is amended to read
4-6 as follows:

4-7 Sec. 262.113. FILING SUIT WITHOUT TAKING POSSESSION OF
4-8 CHILD. (a) An original suit filed by a governmental entity that
4-9 requests to take possession of a child after notice and a hearing
4-10 must be supported by an affidavit sworn to by a person with personal
4-11 knowledge and stating facts sufficient to satisfy a person of
4-12 ordinary prudence and caution that:

4-13 (1) there is a continuing danger to the physical
4-14 health or safety of the child caused by an act or failure to act of
4-15 the person entitled to possession of the child and that allowing the
4-16 child to remain in the home would be contrary to the child's
4-17 welfare; and

4-18 (2) reasonable efforts, consistent with the
4-19 circumstances and providing for the safety of the child, have been
4-20 made to prevent or eliminate the need to remove the child from the
4-21 child's home.

4-22 (b) The affidavit required by Subsection (a) must describe
4-23 all reasonable efforts that were made to prevent or eliminate the
4-24 need for the removal of the child.

4-25 SECTION 7. The changes in law made by this Act apply to a
4-26 suit affecting the parent-child relationship that is filed on or
4-27 after the effective date of this Act. A suit filed before the
4-28 effective date of this Act is governed by the law in effect on the
4-29 date that the suit is filed, and the former law is continued in
4-30 effect for that purpose.

4-31 SECTION 8. This Act takes effect September 1, 2021.

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