

BILL ANALYSIS

Senate Research Center

S.B. 2548
By: Middleton
Health & Human Services
4/24/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Child Protective Services court cases, a judge has the option to order a monitored return of the child to a parent. Courts can utilize this option to give a parent an opportunity to demonstrate their ability to adequately care for the child. Far too often, the Department of Family and Protective Services (DFPS) will remove a child from a monitored return when they would not have the grounds to initially remove a child due to a different burden of proof.

The purpose of S.B. 2548 is to prevent DFPS from removing children from a monitored return unless there is an emergency, or after notice and hearing in which case DFPS must prove the elements required for an original removal.

The bill amends Section 263.403, Family Code, to add that children can only be removed from a monitored return after notice and a hearing, unless an emergency exists, and in that case a hearing must be held within three days. DFPS must prove what is required for an emergency removal under Section 262.104, Family Code, and the court must make those same findings before removing the child from the parent's home.

As proposed, S.B. 2548 amends current law relating to the procedures for the removal of certain children in the managing conservatorship of the Department of Family and Protective Services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 263.403, Family Code, by amending Subsection (c) and adding Subsections (c-1), (c-2), and (c-3), as follows:

(c) Requires the court, if before the dismissal of the suit or the commencement of the trial on the merits a child placed with a parent under Section 263.403 (Monitored Return of Child to Parent) is required to be moved from that home and the court renders a temporary order terminating the monitored return under Subsection (a)(2)(A) (relating to authorizing the court to retain jurisdiction and not dismiss the suit or render a final order if the court renders an order that orders the Department of Family and Protective Services (DFPS) to return the child to the child's parent) or the transition order issued under Subsection (a)(2)(B) (relating to authorizing the court to retain jurisdiction and not dismiss the suit or render a final order if the court renders an order that orders DFPS to transition the child from substitute care to the parent while the parent completes the remaining requirements imposed under a service plan), to schedule a new date for dismissal of the suit at the time the order is rendered. Prohibits the new dismissal date from being later than the original, or extended, dismissal date established under a certain section, or the 30th day after the date the order is rendered under this subsection, whichever date is later.

Deletes existing text requiring the court, if before the dismissal of the suit or the commencement of the trial on the merits a child placed with a parent under this section is

required to be moved from that home by DFPS or the court renders a temporary order terminating the transition order issued under Subsection (a)(2)(B), to, at the time of the move or order, schedule a new date for dismissal of the suit. Deletes existing text prohibiting the new dismissal date from being later than the 180th day after the date the child is moved or the order is rendered under this subsection, whichever date is later.

(c-1) Prohibits DFPS, except as provided by Subsection (c-2), from moving a child who has been placed in the home of a parent under this section from that home without a hearing.

(c-2) Authorizes an authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer to take possession of the child and move the child from the home in an emergency in accordance with Section 262.104 (Taking Possession of a Child in Emergency Without a Court Order). Requires DFPS, a law enforcement officer, or a juvenile probation officer, before moving a child from the home under this subsection, to the extent practicable, to obtain consent to the move from the child's attorney ad litem and guardian ad litem. Requires the court, if a child is moved from the home in an emergency as authorized by this subsection, to, after proper notice, hold a hearing on the move. Requires that the hearing be held before the end of the third day after the day the child is moved from the home.

(c-3) Authorizes the court to order a child to be moved from the home or render any other order under Subsection (c) only if, after a hearing, the court finds by a preponderance of evidence that:

- (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;
- (2) continuation in the home would be contrary to the child's welfare; and
- (3) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need to move the child.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2023.