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By:  Campos H.B. No. 4850

A BILL TO BE ENTITLED

AN ACT

relating to certain procedures in a suit affecting the parent-child relationship.

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

SECTION 1.  Section 262.014, Family Code, is amended to read as follows:

Sec. 262.014.  DISCLOSURE OF CERTAIN EVIDENCE. The [~~On the request of the attorney for a parent who is a party in a suit affecting the parent-child relationship filed under this chapter, or the attorney ad litem for the parent's child, the~~] Department of Family and Protective Services shall, not later than the seventh day before the date of the full adversary hearing, provide to each party:

(1)  the name of any person, excluding a department employee, whom the department will call as a witness to any of the allegations contained in the petition filed by the department and any witness statement provided by the person;

(2)  a copy of any offense report relating to the allegations contained in the petition filed by the department that will be used in court to refresh a witness's memory; [~~and~~]

(3)  a copy of any photograph, video, or recording that will be presented as evidence;

(4)  a copy of any report submitted to the department by a medical provider with the forensic assessment center network regarding a child who is the subject of the suit;

(5)  all exculpatory, impeachment, or mitigating evidence in the possession, custody, or control of the department or its agent that:

(A)  is relevant to a parent who is a party in the suit; and

(B)  tends to negate any claim of abuse or neglect of a child by the parent; and

(6)  a true and correct copy of the department's investigative file, including the intake report with only the name of the reporting party redacted.

SECTION 2.  Section 262.105(a), Family Code, is amended to read as follows:

(a)  When a child is taken into possession without a court order, the person taking the child into possession, without unnecessary delay, shall:

(1)  file a suit affecting the parent-child relationship;

(2)  request the court to appoint an attorney ad litem for the child; [~~and~~]

(3)  request an initial hearing to be held by no later than the first business day after the date the child is taken into possession; and

(4)  provide notice of the initial hearing to the person in possession of the child.

SECTION 3.  Section 262.106(c), Family Code, is amended to read as follows:

(c)  If the initial hearing is not held within the time required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child and the suit affecting the parent-child relationship shall be dismissed.

SECTION 4.  Section 262.107(a), Family Code, is amended to read as follows:

(a)  The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity and dismiss the suit affecting the parent-child relationship, unless the court is satisfied that:

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

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

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

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

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

(2)  continuation of the child 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 for removal of the child.

SECTION 5.  Section 262.201, Family Code, is amended by amending Subsections (a), (g), and (g-1) and adding Subsections (b), (b-1), and (h-1) to read as follows:

(a)  In a suit filed under Section 262.101 or 262.105, [~~unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved,~~] a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless:

(1)  the court grants an extension under Subsection (e) or (e-1);

(2)  the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved; or

(3)  the parties to the suit agree to name the Department of Family and Protective Services as temporary managing conservator of the child.

(b)  A court shall give precedence to a hearing under this section over all other hearings and complete the hearing as soon as practicable.

(b-1)  If the court has not held a full adversary hearing before the end of the 14th day after the date the child was taken into possession by the governmental entity, the court shall dismiss the case unless the court grants an extension under Subsection (e) or (e-1).

(g)  In a suit filed under Section 262.101 or 262.105, at the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession from whom the child is removed and dismiss the suit affecting the parent-child relationship unless the court finds by a preponderance of the [~~sufficient~~] evidence [~~to satisfy a person of ordinary prudence and caution~~] that:

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

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

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

(g-1)  In a suit filed under Section 262.101 or 262.105, if the court does not order the return of the child under Subsection (g) and finds that another parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession did not cause the immediate danger to the physical health or safety of the child or was not the perpetrator of the neglect or abuse alleged in the suit, the court shall name that person temporary sole managing conservator [~~order possession~~] of the child [~~by that person~~] unless the court finds by a preponderance of the [~~sufficient~~] evidence [~~to satisfy a person of ordinary prudence and caution~~] that, specific to each person entitled to possession:

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

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

(h-1)  If the court finds that the child has been abused or neglected, the court shall record in the court's order the factual basis for the finding of abuse or neglect, including to the extent possible, each person's acts or omissions that formed the basis of the court's finding of abuse or neglect.

SECTION 6.  Section 263.002(c), Family Code, is amended to read as follows:

(c)  At each permanency hearing before the final order, the court shall review the placement of each child in the temporary managing conservatorship of the department who has not been returned to the child's home. At the end of the hearing, the court shall order the department to return the child to the child's parent or parents and dismiss the case unless:

(1)  the court finds, with respect to each parent, that:

(A) [~~(1)~~]  there is a continuing danger to the physical health or safety of the child; and

(B) [~~(2)~~]  returning the child to the child's parent or parents is contrary to the welfare of the child; or

(2)  the parties agree that the department should continue as temporary managing conservator of the child.

SECTION 7.  Section 263.501, Family Code, is amended by adding Subsections (h) and (i) to read as follows:

(h)  At each permanency hearing, the court shall order the department to provide services to a parent for not more than six months after the date of the permanency hearing, if the court determines that further efforts at reunification with a parent are:

(1)  in the best interests of the child; and

(2)  likely to result in the child's safe return to the parent.

(i)  At each permanency hearing held under this section, the court shall review the parent's progress relating to any services the court has ordered and, if appropriate, on its own motion, modify the final order to return the child to the parent. This subsection does not prohibit the department or the child's attorney ad litem from filing a motion to modify the final order.

SECTION 8.  Section 263.5031(a), Family Code, is amended to read as follows:

(a)  At each permanency hearing after the court renders a final order, the court shall:

(1)  identify all persons and parties present at the hearing;

(2)  review the efforts of the department or other agency in notifying persons entitled to notice under Section 263.0021;

(3)  for a child placed with a relative of the child or other designated caregiver, review the efforts of the department to inform the caregiver of:

(A)  the option to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and

(B)  the permanency care assistance program under Subchapter K, Chapter 264; and

(4)  review the permanency progress report to determine:

(A)  the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;

(B)  whether the child has been provided the opportunity, in a developmentally appropriate manner, to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child;

(C)  whether the department placed the child with a relative or designated caregiver and the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;

(D)  if the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive environment consistent with the child's best interest and special needs;

(E)  the appropriateness of the primary and alternative permanency goals for the child, whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:

(i)  the department has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or

(ii)  another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;

(F)  for a child whose permanency goal is another planned permanent living arrangement:

(i)  the desired permanency outcome for the child, by asking the child;

(ii)  whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:

(a)  return home;

(b)  be placed for adoption;

(c)  be placed with a legal guardian; or

(d)  be placed with a fit and willing relative;

(iii)  whether the department has conducted an independent living skills assessment under Section 264.121(a-3);

(iv)  whether the department has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;

(v)  if the youth is 16 years of age or older, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e); and

(vi)  if the youth is 18 years of age or older or has had the disabilities of minority removed, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e-1);

(G)  if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community;

(H)  whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;

(I)  for a child receiving psychotropic medication, whether the child:

(i)  has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child's needs; or

(ii)  has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;

(J)  whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events; and

(K)  [~~for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, whether to order the department to provide services to a parent for not more than six months after the date of the permanency hearing if:~~

[~~(i)  the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and~~

[~~(ii)  the court determines that further efforts at reunification with a parent are:~~

[~~(a)  in the best interest of the child; and~~

[~~(b)  likely to result in the child's safe return to the child's parent; and~~

[~~(L)~~]  whether the department has identified a family or other caring adult who has made a permanent commitment to the child.

SECTION 9.  Section 264.203(n), Family Code, is amended to read as follows:

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

(1)  state its findings in the order; and

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

[~~(3)~~] order the participation in specific services narrowly tailored to address the findings made by the court under Subsection (m).

SECTION 10.  Section 262.106(b), Family Code, is repealed.

SECTION 11.  The change in law made by this Act applies to a suit affecting the parent-child relationship that is pending in a trial court on the effective date of this Act or that is filed on or after the effective date of this Act.

SECTION 12.  This Act takes effect September 1, 2023.