

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

1 regarding a child who is the subject of the suit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (C) the parent or person who has possession of
26 the child is currently using a controlled substance as defined by
27 Chapter 481, Health and Safety Code, and the use constitutes an

1 immediate danger to the physical health or safety of the child; or

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

5 (2) continuation of the child in the home would be
6 contrary to the child's welfare; and

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

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

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

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

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

26 (3) the parties to the suit agree to name the
27 Department of Family and Protective Services as temporary managing

1 conservator of the child.

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

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

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

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

25 (2) the urgent need for protection required the
26 immediate removal of the child and reasonable efforts, consistent
27 with the circumstances and providing for the safety of the child,

1 were made to eliminate or prevent the child's removal; and

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

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

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

21 (2) reasonable efforts have been made to enable the
22 person's possession of the child, but possession by that person
23 presents a continuing danger to the physical health or safety of the
24 child caused by an act or failure to act of the person, including a
25 danger that the child would be a victim of trafficking under Section
26 20A.02 or 20A.03, Penal Code.

27 (h-1) If the court finds that the child has been abused or

1 neglected, the court shall record in the court's order the factual
2 basis for the finding of abuse or neglect, including to the extent
3 possible, each person's acts or omissions that formed the basis of
4 the court's finding of abuse or neglect.

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

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

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

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

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

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

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

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

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

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

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

9 SECTION 8. Section [263.5031\(a\)](#), Family Code, is amended to
10 read as follows:

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

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

15 (2) review the efforts of the department or other
16 agency in notifying persons entitled to notice under Section
17 [263.0021](#);

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

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

24 (B) the permanency care assistance program under
25 Subchapter [K](#), Chapter [264](#); and

26 (4) review the permanency progress report to
27 determine:

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

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

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

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

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

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

27 (ii) another permanent placement,

1 including appointing a relative as permanent managing conservator
2 or returning the child to a parent, is appropriate for the child;

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

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

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

11 (a) return home;

12 (b) be placed for adoption;

13 (c) be placed with a legal guardian;

14 or

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

17 (iii) whether the department has conducted
18 an independent living skills assessment under Section
19 [264.121\(a-3\)](#);

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

24 (v) if the youth is 16 years of age or
25 older, whether there is evidence that the department has provided
26 the youth with the documents and information listed in Section
27 [264.121\(e\)](#); and

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

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

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

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

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

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

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

26 (K) [~~for a child for whom the department has been~~
27 ~~named managing conservator in a final order that does not include~~

1 ~~termination of parental rights, whether to order the department to~~
2 ~~provide services to a parent for not more than six months after the~~
3 ~~date of the permanency hearing if:~~

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

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

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

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

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

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

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

20 (1) state its findings in the order; and

21 (2) ~~[make appropriate temporary orders under Chapter~~
22 ~~105 necessary to ensure the safety of the child; and~~

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

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

27 SECTION 11. The change in law made by this Act applies to a

1 suit affecting the parent-child relationship that is pending in a
2 trial court on the effective date of this Act or that is filed on or
3 after the effective date of this Act.

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