89R22859 MM-F

By:  Hull, et al. H.B. No. 2216

Substitute the following for H.B. No. 2216:

By:  Manuel C.S.H.B. No. 2216

A BILL TO BE ENTITLED

AN ACT

relating to procedures and grounds related to the removal and placement of children, including for terminating the parent-child relationship, for taking possession of a child, and for certain hearings in a suit affecting the parent-child relationship filed by a governmental entity.

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

SECTION 1.  Section 161.001, Family Code, is amended by amending Subsections (a), (b), (c), (f), and (g) and adding Subsections (g-1) and (g-2) to read as follows:

(a)  In this section:

(1)  "Active efforts" has the meaning described by Section 262.0001.

(2)  "Born[~~, "born~~] addicted to alcohol or a controlled substance" means a child:

(A) [~~(1)~~]  who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and

(B) [~~(2)~~]  who, after birth as a result of the mother's use of the controlled substance or alcohol:

(i) [~~(A)~~]  experiences observable withdrawal from the alcohol or controlled substance;

(ii) [~~(B)~~]  exhibits observable or harmful effects in the child's physical appearance or functioning; or

(iii) [~~(C)~~]  exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.

(b)  The court may order termination of the parent-child relationship if the court finds beyond a reasonable doubt [~~by clear and convincing evidence~~]:

(1)  that the parent has:

(A)  voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B)  voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C)  voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D)  knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E)  engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F)  failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G)  abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H)  voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I)  contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;

(J)  been the major cause of:

(i)  the failure of the child to be enrolled in school as required by the Education Code; or

(ii)  the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K)  executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L)  been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i)  Section 19.02 (murder);

(ii)  Section 19.03 (capital murder);

(iii)  Section 19.04 (manslaughter);

(iv)  Section 21.11 (indecency with a child);

(v)  Section 22.01 (assault);

(vi)  Section 22.011 (sexual assault);

(vii)  Section 22.02 (aggravated assault);

(viii)  Section 22.021 (aggravated sexual assault);

(ix)  Section 22.04 (injury to a child, elderly individual, or disabled individual);

(x)  Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);

(xi)  Section 25.02 (prohibited sexual conduct);

(xii)  Section 43.25 (sexual performance by a child);

(xiii)  Section 43.26 (possession or promotion of child pornography);

(xiv)  Section 21.02 (continuous sexual abuse of young child or disabled individual);

(xv)  Section 20A.02(a)(7) or (8) (trafficking of persons); and

(xvi)  Section 43.05(a)(2) (compelling prostitution);

(M)  had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N)  constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:

(i)  the department has made active [~~reasonable~~] efforts to return the child to the parent;

(ii)  the parent has not regularly visited or maintained significant contact with the child; and

(iii)  the parent has demonstrated an inability to provide the child with a safe environment;

(O)  failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P)  used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

(i)  failed to complete a court-ordered substance abuse treatment program; or

(ii)  after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q)  knowingly engaged in criminal conduct that has resulted in the parent's:

(i)  conviction of an offense; and

(ii)  confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

(R)  been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;

(S)  voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;

(T)  been convicted of:

(i)  the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

(ii)  criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);

(iii)  criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or

(iv)  the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code;

(U)  been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

(V)  been convicted of:

(i)  criminal solicitation of a minor under Section 15.031, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.031, Penal Code; or

(ii)  online solicitation of a minor under Section 33.021, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 33.021, Penal Code; and

(2)  that termination is in the best interest of the child.

(c)  Evidence of one or more of the following does not constitute [~~clear and convincing~~] evidence beyond a reasonable doubt sufficient for a court to make a finding under Subsection (b) and order termination of the parent-child relationship:

(1)  the parent homeschooled the child;

(2)  the parent is economically disadvantaged;

(3)  the parent has been charged with a nonviolent misdemeanor offense other than:

(A)  an offense under Title 5, Penal Code;

(B)  an offense under Title 6, Penal Code; or

(C)  an offense that involves family violence, as defined by Section 71.004 of this code;

(4)  the parent provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code;

(5)  the parent declined immunization for the child for reasons of conscience, including a religious belief;

(6)  the parent sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to another health care facility; or

(7)  the parent allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.

(f)  In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services, the court may not order termination of the parent-child relationship under Subsection (b)(1) unless the court finds beyond a reasonable doubt [~~by clear and convincing evidence~~] and describes in writing with specificity in a separate section of the order that[~~:~~

[~~(1)~~]  the department made active [~~reasonable~~] efforts to return the child to the parent before commencement of a trial on the merits and despite those active [~~reasonable~~] efforts, a continuing danger remains in the home that prevents the return of the child to the parent[~~; or~~

[~~(2)  reasonable efforts to return the child to the parent, including the requirement for the department to provide a family service plan to the parent, have been waived under Section 262.2015~~].

(g)  In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services in which the department made active [~~reasonable~~] efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, the court shall include in a separate section of its order written findings describing with specificity:

(1)  the active [~~reasonable~~] efforts the department made to return the child to the child's home; and

(2)  evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of the parent-child relationship will result in serious emotional or physical injury to the child.

(g-1)  For the purposes of Subsection (g)(2), evidence of the existence of one or more of the following factors by itself does not constitute evidence beyond a reasonable doubt that continuation of the parent-child relationship is likely to result in serious emotional or physical injury to the child:

(1)  community or family poverty;

(2)  crowded or inadequate housing;

(3)  the child's residence in a single-parent household;

(4)  the parent's age;

(5)  substance use by the parent;

(6)  nonconforming social behavior by the parent; or

(7)  the parent's isolation of the child from social interactions with family, friends, or members of the community.

(g-2)  For the purposes of this section, conduct shall be considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in:

(1)  a substantial risk of death, disfigurement, or bodily injury to the child; or

(2)  an observable and material impairment to the growth, development, or functioning of the child.

SECTION 2.  Section 161.003, Family Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  The court may order termination of the parent-child relationship in a suit filed by the Department of Family and Protective Services if the court finds that:

(1)  the parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;

(2)  the illness or deficiency, in all reasonable probability, proved by [~~clear and convincing~~] evidence beyond a reasonable doubt, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child;

(3)  the department has been the temporary or sole managing conservator of the child of the parent for at least six months preceding the date of the hearing on the termination held in accordance with Subsection (c);

(4)  the department has made active [~~reasonable~~] efforts to return the child to the parent; and

(5)  the termination is in the best interest of the child.

(a-1)  In this section, "active efforts" has the meaning described by Section 262.0001.

SECTION 3.  Section 161.101, Family Code, is amended to read as follows:

Sec. 161.101.  PETITION ALLEGATIONS; PETITION AND MOTION REQUIREMENTS. (a) A petition or motion for the termination of the parent-child relationship must specify [~~is sufficient without the necessity of specifying~~] the underlying facts that support [~~if the petition alleges in~~] the statutory [~~language the~~] ground for the termination of the parent-child relationship and that termination is in the best interest of the child.

(b)  A petition or motion filed by the Department of Family and Protective Services in a suit for termination of the parent-child relationship:

(1)  is subject to Chapter 10, Civil Practice and Remedies Code, and Rule 13, Texas Rules of Civil Procedure; and

(2)  must specify evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of the parent-child relationship will result in serious emotional or physical injury to the child.

(c)  For the purposes of Subsection (b)(2), evidence of the existence of one or more of the following factors by itself does not constitute evidence beyond a reasonable doubt that continuation of the parent-child relationship is likely to result in serious emotional or physical injury to the child:

(1)  community or family poverty;

(2)  crowded or inadequate housing;

(3)  the child's residence in a single-parent household;

(4)  the parent's age;

(5)  substance use by the parent;

(6)  nonconforming social behavior by the parent; or

(7)  the parent's isolation of the child from social interactions with family, friends, or members of the community.

(d)  For the purposes of this section, conduct shall be considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in:

(1)  a substantial risk of death, disfigurement, or bodily injury to the child; or

(2)  an observable and material impairment to the growth, development, or functioning of the child.

SECTION 4.  Sections 161.206(a) and (a-1), Family Code, are amended to read as follows:

(a)  If the court finds [~~by clear and convincing evidence~~] grounds for termination of the parent-child relationship beyond a reasonable doubt, it shall render an order terminating the parent-child relationship.

(a-1)  In a suit filed by the Department of Family and Protective Services seeking termination of the parent-child relationship for more than one parent of the child, the court may order termination of the parent-child relationship for the parent only if the court finds [~~by clear and convincing evidence~~] grounds for the termination of the parent-child relationship for that parent beyond a reasonable doubt.

SECTION 5.  Subchapter A, Chapter 262, Family Code, is amended by adding Section 262.0001 to read as follows:

Sec. 262.0001.  DEFINITION; ACTIVE EFFORTS. (a) In this chapter, "active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite a child with the child's family.

(b)  In cases in which the Department of Family and Protective Services is involved in a suit affecting the parent-child relationship, the department's active efforts must involve assisting the parents through the steps of a service plan and with accessing or developing the resources necessary to satisfy the service plan. The department must tailor the active efforts to the facts and circumstances of each case, including by:

(1)  conducting a comprehensive assessment of the circumstances of the child's family, with a focus on safe reunification as the most desirable goal;

(2)  identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(3)  conducting or causing to be conducted a diligent search for the child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the child and the child's parents;

(4)  taking steps to keep siblings together whenever possible;

(5)  supporting regular visits with parents in the most natural setting possible as well as trial home visits of the child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(6)  identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the child's family, in using and accessing those resources;

(7)  monitoring progress and participation in services;

(8)  considering alternative ways to address the needs of the child's parents and, where appropriate, the family, if the optimum services do not exist or are not available; and

(9)  providing post-reunification services and monitoring.

(c)  The assistance provided under Subsection (b) regarding the parent's service plan must be narrowly tailored to address the specific issues identified in the court's order granting the department temporary managing conservatorship or ordering the department to provide family preservation services.

SECTION 6.  Section 262.001(b), Family Code, is amended to read as follows:

(b)  In determining the active [~~reasonable~~] efforts that are required to be made with respect to preventing or eliminating the need to remove a child from the child's home or to make it possible to return a child to the child's home, the child's health and safety is the paramount concern. The active efforts under this subsection must be evaluated to ensure the efforts are consistent with the circumstances of the removal of the child from the child's home and provide for the child's safety.

SECTION 7.  Section 262.014, Family Code, is amended to read as follows:

Sec. 262.014.  DISCLOSURE OF CERTAIN EVIDENCE. In [~~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 by[~~, or the attorney ad litem for the parent's child,~~] the Department of Family and Protective Services, the department shall, as soon as practicable but not later than the seventh day before the full adversary hearing, provide electronically to the parent who is a party to the suit, the attorney for the parent who is a party to the suit, and the attorney ad litem for the parent's child:

(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;

(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 medical, psychological, psychiatric, or educational records in the department's possession related to the suit and submitted to the department from any source, including exculpatory records, regardless of whether the department will use the records in court; and

(5)  a copy of any records relating to consultations under Section 261.3017 regarding a child who is the subject of the suit, including exculpatory consultation records, regardless of whether the department will use the records in court.

SECTION 8.  Section 262.101(a), Family Code, is amended to read as follows:

(a)  An original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution 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;

(3)  there is no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C;

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

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

(A)  was offered but refused;

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

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

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

SECTION 9.  Section 262.101(b), Family Code, as added by Chapters 672 (H.B. 968) and 675 (H.B. 1087), Acts of the 88th Legislature, Regular Session, 2023, is reenacted and amended to read as follows:

(b)  The affidavit required by Subsection (a) must describe with specificity in a separate section all active [~~reasonable~~] efforts, consistent with the circumstances and providing for the safety of the child, that were made to prevent or eliminate the need for the removal of the child.

SECTION 10.  Sections 262.102(a) and (e), Family Code, are amended to read as follows:

(a)  Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section 105.001(a)(1) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find 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;

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

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

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

(A)  was offered but refused;

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

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

(6)  active [~~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.

(e)  The temporary order, temporary restraining order, or attachment of a child rendered by the court under Subsection (a) must describe with specificity in a separate section the active [~~reasonable~~] efforts, consistent with the circumstances and providing for the safety of the child, that were made to prevent or eliminate the need for the removal of the child as required by Subsection (a)(6) [~~(a)(4)~~].

SECTION 11.  Section 262.105(b), Family Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

(D)  placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264:

(i)  was offered but refused;

(ii)  was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or

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

(E)  active [~~reasonable~~] efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

SECTION 12.  Section 262.105(c), Family Code, as added by Chapters 672 (H.B. 968) and 675 (H.B. 1087), Acts of the 88th Legislature, Regular Session, 2023, is reenacted and amended to read as follows:

(c)  The affidavit required by Subsection (b) must describe with specificity in a separate section all active [~~reasonable~~] efforts, consistent with the circumstances and providing for the safety of the child, that were made to prevent or eliminate the need for the removal of the child.

SECTION 13.  Section 262.107, Family Code, is amended by amending Subsections (a) and (c) and adding Subsections (a-1) and (a-2) 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 unless the court is satisfied that:

(1)  clear and convincing [~~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 based on evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of the child in the home will result in serious emotional or physical injury to the child;

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

(4)  placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264:

(A)  was offered but refused;

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

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

(5)  active [~~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.

(a-1)  Evidence of the existence of one or more of the following factors by itself does not constitute clear and convincing evidence that continuation of the child in the home is likely to result in serious emotional or physical injury to the child:

(1)  community or family poverty;

(2)  crowded or inadequate housing;

(3)  the child's residence in a single-parent household;

(4)  the parent's age;

(5)  substance use by the parent;

(6)  nonconforming social behavior by the parent; or

(7)  the parent's isolation of the child from social interactions with family, friends, or members of the community.

(a-2)  For the purposes of this section, conduct shall be considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in:

(1)  a substantial risk of death, disfigurement, or bodily injury to the child; or

(2)  an observable and material impairment to the growth, development, or functioning of the child.

(c)  If the court does not order the return of the child at an initial hearing under Subsection (a), the court must describe in writing and in a separate section the active [~~reasonable~~] efforts, consistent with the circumstances and providing for the safety of the child, that were made to prevent or eliminate the need for the removal of the child.

SECTION 14.  Section 262.114, Family Code, is amended by amending Subsections (b) and (d) and adding Subsection (e) to read as follows:

(b)  The department shall [~~may~~] place a child with a relative or other designated caregiver identified on the proposed child placement resources form, including any adult identified by the child, if the department determines that the placement is in the best interest of the child. The department must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver's home before the child is placed with the relative or other designated caregiver. The department may place the child with the relative or designated caregiver before conducting the home study required under Subsection (a). Not later than 48 hours after the time that the child is placed with the relative or other designated caregiver, the department shall begin the home study of the relative or other designated caregiver. The department shall complete the home study as soon as possible unless otherwise ordered by a court. The department shall provide a copy of an informational manual required under Section 261.3071 to the relative or other designated caregiver at the time of the child's placement.

(d)  In making a placement decision for a child, the department shall give preference to persons in the following order unless there is good cause shown to deviate from the order:

(1)  a person related to the child by blood, marriage, or adoption;

(2)  a person with whom the child has a long-standing and significant relationship;

(3)  a foster parent with whom the child previously successfully resided while in the temporary managing conservatorship of the department;

(4)  a foster home; and

(5) [~~(4)~~]  a general residential operation.

(e)  In making a determination of whether there is good cause shown to deviate from the preferred placement order under Subsection (d), the department may not consider as part of the best interest determination:

(1)  the socioeconomic status of the individuals with whom the department is considering placing the child; or

(2)  ordinary bonding between the child and a previous caregiver related to time spent in a non-preferred placement.

SECTION 15.  Subchapter B, Chapter 262, Family Code, is amended by adding Section 262.1141 to read as follows:

Sec. 262.1141.  RIGHT TO INTERVENE. (a) In a suit filed under Section 262.101 or 262.105 in which the Department of Family and Protective Services is appointed as the temporary managing conservator of a child who is the subject of the suit, a person who qualifies as a placement preference for the child under Section 262.114(d)(1) may file a motion to intervene in the suit if the department did not place the child with the person.

(b)  The court shall grant a person's motion to intervene under this section if the court finds:

(1)  the person qualifies for a placement preference under Section 262.114(d)(1); and

(2)  the department, without good cause, placed the child with a person with a lower preference under Section 262.114(d).

(c)  The department shall notify a person described by Subsection (a) in writing of the person's right to intervene.

SECTION 16.  Section 262.201, Family Code, is amended by amending Subsections (c), (d), (e), (e-1), (g), (g-1), (g-2), and (h) and adding Subsection (e-2) to read as follows:

(c)  As soon as practicable before [~~Before~~] commencement of the full adversary hearing, the court must inform each parent not represented by an attorney of:

(1)  the right to be represented by an attorney; and

(2)  if a parent is indigent [~~and appears in opposition to the suit~~], the right to a court-appointed attorney.

(d)  If a parent claims indigence [~~and requests the appointment of an attorney before the full adversary hearing~~], the court shall require the parent to complete and file with the court an affidavit of indigence. The court may consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the appointment of an attorney for the parent is required [~~requested~~], the court shall make a determination of indigence before commencement of the full adversary hearing. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent.

(e)  The court shall [~~may~~], for good cause shown, postpone the full adversary hearing for not more than 30 [~~seven~~] days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. The court may shorten or lengthen the extension granted under this subsection if the parent and the appointed attorney agree in writing. If the court postpones the full adversary hearing, the court shall extend a temporary order, temporary restraining order, or attachment issued by the court under Section 262.102(a) for the protection of the child until the date of the rescheduled full adversary hearing.

(e-1)  If a parent who is not indigent appears in opposition to the suit, the court shall [~~may~~], for good cause shown, postpone the full adversary hearing for not more than 30 [~~seven~~] days from the date of the parent's appearance to allow the parent to hire an attorney or to provide the parent's attorney time to respond to the petition and prepare for the hearing. A postponement under this subsection is subject to the limits and requirements prescribed by Subsection (e) and Section 155.207.

(e-2)  If a court postpones or grants a continuance for a full adversary hearing, the department shall immediately modify any existing visitation plan to increase the visitation time for the parent and a child who has been removed. Visitation through online or electronic communication may satisfy the increased visitation plan requirement under this subsection.

(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 unless the court finds clear and convincing [~~sufficient~~] evidence [~~to satisfy a person of ordinary prudence and caution~~] that:

(1)  there was a danger to the physical health or safety of the child, 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 active [~~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)  active [~~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 order possession of the child by that person unless the court finds 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)  active [~~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.

(g-2)  If, at the conclusion of a full adversary hearing, the court renders an order under Subsection (g) or (g-1), the court must describe in writing and in a separate section:

(1)  the active [~~reasonable~~] efforts that were made to enable the child to return home and the substantial risk of a continuing danger if the child is returned home, as required by Subsection (g)(3); or

(2)  the active [~~reasonable~~] efforts that were made to enable a person's possession of the child and the continuing danger to the physical health or safety of the child as required by Subsection (g-1)(2).

(h)  In a suit filed under Section 262.101 or 262.105, if the court finds clear and convincing [~~sufficient~~] evidence to make the applicable finding under Subsection (g) or (g-1), the court shall issue an appropriate temporary order under Chapter 105.

SECTION 17.  Section 262.2015, Family Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (c-1) to read as follows:

(a)  The court may not waive the requirement of a service plan and the requirement to make active [~~reasonable~~] efforts to return the child to a parent. The court [~~and~~] may accelerate the trial schedule to result in a final order for a child under the care of the Department of Family and Protective Services at an earlier date than provided by Subchapter D, Chapter 263, if the court finds that the parent has subjected the child to aggravated circumstances.

(b)  The court may find under Subsection (a) that a parent has subjected the child to aggravated circumstances if:

(1)  the parent abandoned the child without identification or a means for identifying the child;

(2)  the child or another child of the parent is a victim of serious bodily injury or sexual abuse inflicted by the parent or by another person with the parent's consent;

(3)  the parent has engaged in conduct against the child or another child of the parent that would constitute an offense under the following provisions of the Penal Code:

(A)  Section 19.02 (murder);

(B)  Section 19.03 (capital murder);

(C)  Section 19.04 (manslaughter);

(D)  Section 21.11 (indecency with a child);

(E)  Section 22.011 (sexual assault);

(F)  Section 22.02 (aggravated assault);

(G)  Section 22.021 (aggravated sexual assault);

(H)  [~~Section 22.04 (injury to a child, elderly individual, or disabled individual);~~

[~~(I)  Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);~~

[~~(J)~~]  Section 25.02 (prohibited sexual conduct);

(I) [~~(K)~~]  Section 43.25 (sexual performance by a child);

(J) [~~(L)~~]  Section 43.26 (possession or promotion of child pornography);

(K) [~~(M)~~]  Section 21.02 (continuous sexual abuse of young child or disabled individual);

(L) [~~(N)~~]  Section 43.05(a)(2) (compelling prostitution); or

(M) [~~(O)~~]  Section 20A.02(a)(7) or (8) (trafficking of persons);

(4)  the parent voluntarily left the child alone or in the possession of another person not the parent of the child for at least six months without expressing an intent to return and without providing adequate support for the child;

(5)  the parent has been convicted for:

(A)  the murder of another child of the parent and the offense would have been an offense under 18 U.S.C. Section 1111(a) if the offense had occurred in the special maritime or territorial jurisdiction of the United States;

(B)  the voluntary manslaughter of another child of the parent and the offense would have been an offense under 18 U.S.C. Section 1112(a) if the offense had occurred in the special maritime or territorial jurisdiction of the United States;

(C)  aiding or abetting, attempting, conspiring, or soliciting an offense under Paragraph (A) or (B); or

(D)  the felony assault of the child or another child of the parent that resulted in serious bodily injury to the child or another child of the parent; or

(6)  the parent is required under any state or federal law to register with a sex offender registry.

(c)  On finding that the parent has subjected the child to aggravated circumstances [~~reasonable efforts to make it possible for the child to safely return to the child's home are not required~~], the court shall at any time before the 30th day after the date of the finding, conduct an initial permanency hearing under Subchapter D, Chapter 263. Separate notice of the permanency plan is not required but may be given with a notice of a hearing under this section.

(c-1)  On a court's finding that a parent has subjected the child to aggravated circumstances, the department shall create, in conjunction with the parent and the parent's attorney, if applicable, a limited service plan. The limited service plan satisfies the requirement that the department make active efforts to return the child to the parent under Section 161.003 and:

(1)  must comply with any court order rendered in the case pertaining to bond or supervision; and

(2)  may contain only tasks that protect the safety of the child and due process rights of the parent.

SECTION 18.  Section 263.202(b), Family Code, is amended to read as follows:

(b)  Except as otherwise provided by this subchapter, a status hearing shall be limited to matters related to the contents and execution of the service plan filed with the court.  The court shall review the service plan that the department filed under this chapter for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

(1)  a plan that has the goal of returning the child to the child's parents adequately ensures that active [~~reasonable~~] efforts are made to enable the child's parents to provide a safe environment for the child;

(2)  the child's parents have reviewed and understand the plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents;

(3)  the plan is narrowly tailored to address any specific issues identified by the department;

(4)  the child's parents and the representative of the department have signed the plan;

(5)  based on the court's determination under Section 263.002, continued placement is appropriate if the child is placed in a residential treatment center; and

(6)  based on the court's determination under Section 263.00201, continued placement is appropriate if the child is placed in a qualified residential treatment program.

SECTION 19.  Section 263.306(a-1), Family Code, is amended to read as follows:

(a-1)  At each permanency hearing before a final order is rendered, the court shall:

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

(2)  review the efforts of the department or other agency in:

(A)  locating and requesting service of citation on all persons entitled to service of citation under Section 102.009; and

(B)  obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, relative of the child, or other adult identified by the child as a potential relative or designated caregiver;

(3)  ask all parties present whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated;

(4)  review the extent of the parties' compliance with temporary orders and the service plan and the extent to which progress has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care;

(5)  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)  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;

(C)  the appropriateness of the primary and alternative permanency goals for the child developed in accordance with department rule and whether the department has made active [~~reasonable~~] efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child;

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

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

(F)  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;

(G)  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 have been major changes in the child's school performance or there have been serious disciplinary events;

(H)  for a child 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;

(I)  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);

(J)  based on the court's determination under Section 263.002, whether continued placement is appropriate if the child is placed in a residential treatment center; and

(K)  based on the court's determination under Section 263.00201, whether continued placement is appropriate if the child is placed in a qualified residential treatment program;

(6)  determine whether to return the child to the child's parents if the child's parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(7)  estimate a likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in permanent managing conservatorship; and

(8)  announce in open court the dismissal date and the date of any upcoming hearings.

SECTION 20.  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 active [~~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;

(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;

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

(M)  based on the court's determination under Section 263.002, whether continued placement is appropriate if the child is placed in a residential treatment center; and

(N)  based on the court's determination under Section 263.00201, whether continued placement is appropriate if the child is placed in a qualified residential treatment program.

SECTION 21.  Section 263.602(b), Family Code, is amended to read as follows:

(b)  A court with extended jurisdiction over a young adult in extended foster care shall conduct extended foster care review hearings every six months for the purpose of reviewing and making findings regarding:

(1)  whether the young adult's living arrangement is safe and appropriate and whether the department has made active [~~reasonable~~] efforts to place the young adult in the least restrictive environment necessary to meet the young adult's needs;

(2)  whether the department is making active [~~reasonable~~] efforts to finalize the permanency plan that is in effect for the young adult, including a permanency plan for independent living;

(3)  whether, for a young adult whose permanency plan is independent living:

(A)  the young adult participated in the development of the plan of service;

(B)  the young adult's plan of service reflects the independent living skills and appropriate services needed to achieve independence by the projected date; and

(C)  the young adult continues to make reasonable progress in developing the skills needed to achieve independence by the projected date; and

(4)  whether additional services that the department is authorized to provide are needed to meet the needs of the young adult.

SECTION 22.  Section 264.0091, Family Code, is amended to read as follows:

Sec. 264.0091.  USE OF TELECONFERENCING AND VIDEOCONFERENCING TECHNOLOGY. The [~~Subject to the availability of funds, the~~] department, in cooperation with district and county courts, shall expand the use of teleconferencing and videoconferencing to facilitate participation by families, medical experts, children, and other individuals in court proceedings, including children for whom the department or a licensed child-placing agency has been appointed managing conservator and who are committed to the Texas Juvenile Justice Department.

SECTION 23.  Subchapter A, Chapter 264, Family Code, is amended by adding Section 264.020 to read as follows:

Sec. 264.020.  PLACEMENT OF CHILDREN IN CONSERVATORSHIP OF DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. (a) In this section, "child" means a person who:

(1)  is younger than 22 years of age and for whom the department has been appointed managing conservator of the child before the child's 18th birthday; or

(2)  is the responsibility of an agency with which the department has entered into an agreement to provide care and supervision of the child.

(b)  In making the initial or a subsequent placement decision for a child, the department shall give preference to persons in the following order:

(1)  a person related to the child by blood, marriage, or adoption;

(2)  a person with whom the child has a long-standing and significant relationship;

(3)  a foster parent with whom the child previously successfully resided while in the temporary managing conservatorship of the department;

(4)  a foster home; and

(5)  a general residential operation.

SECTION 24.  Section 161.101, Family Code, as amended by this Act, applies only to a petition or motion filed by the Department of Family and Protective Services on or after the effective date of this Act. A petition or motion filed by the department before that date is governed by the law in effect on the date the petition or motion was filed, and the former law is continued in effect for that purpose.

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

SECTION 26.  Section 264.020, Family Code, as added by this Act, applies only to an initial or subsequent placement decision made by the Department of Family and Protective Services on or after the effective date of this Act.

SECTION 27.  To the extent of any conflict, this Act prevails over another Act of the 89th Legislature, Regular Session, 2025, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 28.  This Act takes effect January 1, 2027.