

## **BILL ANALYSIS**

Senate Research Center

S.B. 34  
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Jurisprudence  
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### **DIGEST**

Currently, Title 5, Family Code, sets forth the guidelines relating to, among other items, the termination of the parent-child relationship and adoption. Approximately 1,400 children in court-ordered state conservatorship for whom the plan was adopted under the guidelines of Title 5, Family Code, were legally free for adoption. Approximately one third of these 1,400 children had been waiting for more than two years to be adopted, 16 percent of which had been waiting for over three years. Approximately 40 percent of the children in the custody of the Department of Protective and Regulatory Services had been in such custody for more than two years. The *Report of the Governor's Committee to Promote Adoption* has suggested various revisions to Title 5, Family Code, relating to the parent-child relationship, suits affecting the parent-child relationship, and the protection of children, in order to promote adoption in Texas. This bill would amend Title 5, Family Code, to reflect the changes suggested by the Governor's Report to promote adoption.

### **PURPOSE**

As proposed, S.B. 34 amends guidelines relating to parent-child relationship, suits affecting the parent-child relationship, and the protection of children in Title 5, Family Code.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Department of Protective and Regulatory Services in SECTION 15 (Section 264.207, Family Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 107.006, Family Code, to provide that before a person may be appointed as guardian ad litem or attorney ad litem, the person must, among other conditions, complete training approved, rather than provided, by the State Bar of Texas in, among other items, the representation of children; and the person must complete as part of the person's annual continuing legal education requirement no fewer than three hours in family law issues related to the representation of children. Authorizes a party to a proceeding in which a person is appointed as a guardian ad litem or an attorney ad litem to object to appointment of the person at any time before the date of the trial of the proceeding by filing a written motion. Requires the court to promptly rule on an objection raised under this subsection and to order the removal of the guardian ad litem or attorney ad litem if the court finds that the objection is justifiable, rather than reasonable. Makes conforming changes.

SECTION 2. Amends Section 151.002, Family Code, by adding Subsection (c), to prohibit a man who fails to claim paternity before the 30th day after the date of the birth of the child from asserting any interest in the child with respect to the adoption of the child, the termination of paternal rights, or the establishment of paternity after the filing of a suit for termination of the man's parental rights or for the adoption of the child unless the person proves by clear and convincing evidence that it was not possible to file a notice of intent to claim paternity within the prescribed time; and a notice of intent to claim paternity was filed before the 30th day after the date it became possible to file the notice.

SECTION 3. Amends Section 151.003(a), Family Code, by providing that a parent of a child has certain rights and duties including, among other duties, the duty to acknowledge parentage in

accordance with Section 151.002 or 160.201 of this code. Makes conforming changes.

SECTION 4. Amends Section 161.001, Family Code, to authorize a court to order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent, among other options and conditions, has 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; the parent has constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services (department) or an authorized agency, and the department or authorized agency has made reasonable efforts to return the child to the parent, and the parent has not regularly visited and, rather than or, maintained significant contact with the child, or, rather than and, demonstrated an ability, rather than inability, to provide the child with a safe environment; the parent has been adjudicated to be criminally responsible for certain crimes; or the parent has 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 as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child. Makes conforming changes.

SECTION 5. Amends Section 161.002, Family Code, by adding Subsections (c), (d), and (e), to provide that ignorance of a pregnancy is not sufficient reason for failing to timely file an admission of paternity or a counterclaim for paternity under Chapter 160 prior to the final hearing in the suit. Provides that misrepresentation by the mother or another person concerning the facts of the pregnancy is not sufficient reason for failing to timely file an admission of paternity or a counterclaim for paternity under Chapter 160 prior to the final hearing in the suit. Provides that a man who has sexual intercourse with a woman is deemed to have knowledge that sexual intercourse can result in the woman's pregnancy and is required to file a notice of intent to claim paternity as provided by Chapter 160 to assert his right to establish paternity of a child that may result from the sexual intercourse.

SECTION 6. Amends Chapter 262A, Family Code, by adding Section 262.008, as follows:

Sec. 262.008. ABANDONED CHILDREN. Authorizes an authorized representative of the department to assume the care, control, and custody of a child who is abandoned without identification or a means for identifying the child; and whose identity cannot be asserted by the exercise of reasonable diligence. Requires the department to immediately file a suit to terminate the parent-child relationship of a child under this section. Provides that a child for whom possession is assumed under this section need not be delivered to the court except on the order of the court.

SECTION 7. Amends Chapter 263A, Family Code, by adding Sections 263.006 and 263.007, as follows:

Sec. 263.006. ABANDONED CHILD. Requires the department, on obtaining possession of a child who is abandoned without identification and whose identity cannot be ascertained by the exercise of reasonable diligence, to file a suit to terminate the parent-child relationship. Authorizes the department to seek termination of the parent-child relationship without filing a service plan or conducting a status hearing or a permanency hearing. Requires the court to order termination of the parent-child relationship on a showing by the department by clear and convincing evidence that grounds for termination under Section 161.002(1)(G) exists; and termination is in the best interest of the child.

Sec. 263.007. ABUSE, DRUG OR ALCOHOL ABUSE, AND FAILURE TO MEET PAST SERVICE PLANS. Authorizes the department, after conducting an investigation under Chapter 261, to seek termination of the parent-child relationship without filing a service plan or conducting a status hearing or a permanency hearing if the parent of the child suffers from drug or alcohol abuse, has abused the child or another child in the parent's custody, has failed to meet past service plan goals, or has failed to protect the child or another child in the parent's custody from abuse. Requires the court to order termination of the parent-child relationship on a showing by the department by clear and convincing evidence of a ground

for termination under Section 161.001(1) and the termination is in the best interest of the child. Defines "abuse."

SECTION 8. Amends Section 263.201, Family Code, to require the court, by the 60th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child, rather than after the date of full adversary hearing under Chapter 262, to hold a status hearing to review the child's status and the permanency plan developed for the child.

SECTION 9. Amends the heading to Chapter 263D, Family Code, as follows:

SUBCHAPTER D. New heading: PERMANENCY HEARINGS

SECTION 10. Amends Sections 263.301(a) and (b), Family Code, to require notice of a permanency, rather than a review, hearing to be given as provided by certain rules of civil procedure to all persons entitled to notice of the hearing. Provides that certain persons are entitled to at least 10 days notice of a permanency hearing, rather than a hearing to review a child's placement, and are entitled to present evidence and be heard at the hearing, including an attorney ad litem and a volunteer advocate appointed for the child under Chapter 107. Makes conforming changes.

SECTION 11. Amends Chapter 263D, Family Code, by amending Section 263.302 and by adding Section 263.3025, as follows:

Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. Requires the child to attend each permanency hearing unless the court specifically excuses the child's attendance. Provides that failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing. Makes conforming changes.

Sec. 263.3025. PERMANENCY PLAN. Requires the department to prepare a permanency plan for a child for whom the department has been appointed temporary managing conservator. Requires the department to give a copy of the plan to each person entitled to notice under Section 263.301(b) by the 10th day before the date of the child's first permanency hearing. Requires the permanency plan to contain the information required to be included in a permanency progress report under Section 263.303. Requires the department to modify the permanency plan for a child as required by the circumstances and needs of the child.

SECTION 12. Amends Chapter 263D, Family Code, by amending Sections 263.303-263.305 and by adding Section 263.3055, as follows:

Sec. 263.303. New heading: PERMANENCY PROGRESS REPORT. Requires the department or other authorized agency, by the 10th day before the date for each permanency hearing other than the first permanency hearing, to file with the court and provide to each party, the child's attorney ad litem, and the child's volunteer advocate a permanency report, rather than a status, report, unless the court orders a different period providing the report. Sets forth the required recommendation options of the permanency report. Deletes certain provisions relating to the required recommendation options of the status report. Sets forth the required recommendation options for the department's permanency progress report for the first permanency hearing conducted on or after the first anniversary of the date the child was placed in the conservatorship of the department. Makes conforming changes.

Sec. 263.304. New heading: INITIAL PERMANENCY HEARING; TIME. Requires the court, by the 180th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child, rather than after the date of the conclusion of the full adversary hearing, to hold a permanency hearing to review the status of, and permanency plan for, the child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under Section 263.3055. Deletes provision relating to initial review hearing.

Sec. 263.305. New heading: SUBSEQUENT PERMANENCY HEARINGS. Requires a

subsequent permanency hearing, rather than a subsequent review hearing, to be held by the 120th day after the date of the last permanency hearing in the suit. Authorizes the court to order more frequent hearings for good cause shown or on the court's own motion. Deletes previous provisions relating to subsequent review hearings.

Sec. 263.3055. COURT ORDER FOLLOWING ONE YEAR OF CONSERVATORSHIP WITH DEPARTMENT. Requires the court, at the first permanency hearing conducted on or after the first anniversary of the date the child was placed in the department's conservatorship, to order that the child be returned to the child's parents and the suit be dismissed; or that the parents' parental rights to the child be terminated and that the department remain the conservator of the child.

SECTION 13. Amends Section 263.306, Family Code, as follows:

Sec. 263.306. New heading: PERMANENCY HEARINGS: PROCEDURE. Sets forth the procedures the court is required to follow at each permanency hearing. Deletes provisions relating to determinations the court is required to make at each review hearing. Makes conforming changes.

SECTION 14. Amends Chapter 264B, Family Code, by adding Sections 264.110 and 264.111, as follows:

Sec. 264.110. ADOPTION AND FOSTER CARE INFORMATION. Requires the department to maintain in the department's central database information concerning children placed in the department's custody, including certain information on each formal adoption of a child in this state; and certain information on each placement of a child in foster care. Requires the department to compile certain information relating to adoptions and adoption services. Requires the department to make the information maintained under this section, other than information that is required by law to be confidential, available to the public by computer.

Sec. 264.111. STATUS REVIEW OF CHILDREN IN FOSTER CARE. Requires the department to review the status of each child in foster care at least once every 12 months. Requires the status review to analyze the length of time the child has been in foster care and the barriers to placing the child for adoption or returning the child to the child's parents. Requires the department to report the results of the status review for each child in foster care to the Board of Protective and Regulatory Services.

SECTION 15. Amends Chapter 264C, Family Code, by adding Sections 264.206 and 264.207, as follows:

Sec. 264.206. SEARCH FOR ADOPTIVE PARENTS. Requires the department to begin its efforts to locate qualified persons to adopt a child at the time the department decides to petition for the termination of the parent-child relationship with regard to the child.

Sec. 264.207. DEPARTMENT PLANNING AND ACCOUNTABILITY. Requires the department to adopt policies that provide for the improvement of the department's services for children and families. Requires the policies to be designed to increase the accountability of the department to individuals who receive services and to the public; and to assure consistency of services provided by the department in the different regions of the state. Requires the department to establish time frames for the initial screening of families seeking to adopt children; provide for the evaluation of the effectiveness of the department's management-level employees in expeditiously making permanent placements of the children; establish comprehensive assessment service centers in various locations in the state to determine the needs of children and families served by the department; and emphasize and centralize the monitoring and promoting of the permanent placement of children receiving department services.

SECTION 16. Amends Section 264.603(a), Family Code, to require a certain contract to

require measurable goals and objectives for expanding local volunteer child advocate programs to areas of the state in which those programs do not exist.

SECTION 17. Amends Chapter 72C, Government Code, by adding Section 72.028, as follows:

Sec. 72.028. REPORT ON JUDICIAL EFFICIENCY IN CERTAIN FAMILY LAW CASES. Requires the Office of Court Administration of the Texas Judicial System (office) to prepare and submit a report on judicial efficiency in cases brought by the department under Title 5, Family Code, to the governor, the lieutenant governor, the speaker of the house of representatives, and the chief justice of the supreme court by December 1 of each year. Requires the report to cover a one-year period beginning September 1 of the preceding year and to include certain information about cases brought by the department under Title 5, Family Code. Requires the department to cooperate with the office in the preparation of the report.

SECTION 18. Effective date: September 1, 1997.

SECTION 19. (a)-(b) Provides that changes in law made by the amending Sections 107.006 and 161.001, Family Code, by this Act, and by adding Sections 262.008, 263.006, and 263.007, Family Code, by this Act, are prospective.

(c) Provides that changes in law made by amending Sections 263.201 and 263.301 - 263.306, Family Code, by this Act, and by adding Sections 263.302, 263.3055, and 264.206-264.207, Family Code, by this Act, are retroactive. Prohibits a court from issuing an order required by Sections 263.3055, Family Code, as added by this Act, until the first anniversary of the effective date of this Act.

(d) Requires the Office of Court Administration of the Texas Judicial System to submit the first report under Section 72.028, Government Code, as added by this Act, by December 1, 1998.

SECTION 20. Emergency clause.