

BILL ANALYSIS

Senate Research Center
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H.B. 3838
By: Goodman (Harris)
Jurisprudence
5/13/1999
Engrossed

DIGEST

H.B. 3838 amends Chapters 262 (Emergency Procedures in Suit by Governmental Entity) and 263 (Review of Placement of Children Under Care of Department of Protective and Regulatory Services), Family Code, to ensure compliance with recent federal enactments and to improve the effectiveness of child protective services for abused and neglected children.

PURPOSE

As proposed, H.B. 3838 establishes guidelines for the protection of certain children.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 155.204, Family Code, by amending Subsection (a) and adding Subsection (f), to add language to provide that a motion to transfer by a petitioner or movant is timely if it is made at the time the initial pleadings are filed, except as provided by Section 262.203 (Transfer of Suit). Authorizes a party to file the transfer order with the clerk of the court of continuing, exclusive jurisdiction, if a transfer order has been rendered by a court exercising jurisdiction under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child), and requires the clerk to transfer the files.

SECTION 2. Amends Section 261.101(d), Family Code, to provide that the identity of an individual making a report under this chapter is confidential and may be disclosed only under certain specified conditions, unless waived in writing by the person making the report. Makes nonsubstantive changes.

SECTION 3. Amends Section 261.201, Family Code, by amending Subsections(b) and (c) and adding Subsection (h), to authorize a court to order the disclosure of confidential information under this section if the court determines that the disclosure of the information is not likely to endanger the life or safety of the person who provides care for the child. Authorizes a court on its own motion to order disclosure of confidential information under this section if the court finds that disclosure of the information is not likely to endanger the life or safety of a person who provides care for the child. Provides that this section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

SECTION 4. Amends Section 261.301(b), Family Code, to require the Department of Protective and Regulatory Services (DPRS), in conducting an investigation for a facility operated, licensed, certified, registered, or listed by DPRS, to perform the investigation as provided by Subchapter E and the Human Resources Code.

SECTION 5. Amends Section 261.303, Family Code, by amending Subsection (c) and adding Subsection (d), to add language to provide that if a parent or person responsible for the child's care does not consent to release of the child's prior medical, psychological, or psychiatric records, the appropriate court is required, for good cause shown, to order those records to be released at the time and place the court designates. Requires a person, including a medical facility, that makes a report under Subchapter B to release to DPRS or designated agency records that directly relate to the suspected abuse or neglect without requiring parental consent or a court order as part of the required report under Section 261.103.

SECTION 6. Amends Sections 261.305(a)-(c), Family Code, to add language to specify that the person

the inquiry relates to is the person who is the subject of a report under Subchapter B. Deletes text to exclude an inquiry under this subsection relating to a child. Adds language to provide that if the parent or person does not consent to an examination, the appropriate court is required to order the examination to be made. Requires that the fees for the appointed attorney be paid as provided by Chapter 107, rather than by DPRS or designated agency. Makes conforming and nonsubstantive changes.

SECTION 7. Reenacts Section 261.405 (Investigations In Pre-Adjudication And Post-Adjudication Secure Juvenile Facilities), Family Code, as amended by Chapters 162 and 1374, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 8. Amends Section 261.406(b), Family Code, to require DPRS to send a written report of its investigation, as appropriate, to the Texas Education Agency, the agency responsible for teacher certification, the local school board or the school's governing body, rather than the local governing body, and the school principal or director, unless the principal or director is alleged to have committed the abuse or neglect. Deletes existing text requiring that the report of investigation be edited to protect the identity of the person who provided information for the report of abuse or neglect.

SECTION 9. Amends the title of Chapter 262, Family Code, to read as follows:

CHAPTER 262. New heading: PROCEDURES IN SUIT BY GOVERNMENTAL ENTITY TO
PROTECT HEALTH AND SAFETY OF CHILD

SECTION 10. Amends Section 262.001, Family Code, to provide that in determining the 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. Makes conforming changes.

SECTION 11. Amends Section 262.002, Family Code, to make conforming changes with respect to the title change in SECTION 9.

SECTION 12. Amends Section 262.007(c), Family Code, to shorten the time DPRS may retain possession of a child, without a court order, from not longer than 14 days to not longer than five days after the date the child is delivered to DPRS if a person entitled to possession of the child is not available to take possession of the child. Makes a conforming change.

SECTION 13. Amends the title of Subchapter B, Chapter 262, Family Code, to make a conforming change.

SECTION 14. Amends Section 262.101, Family Code, to provide that an original suit, rather than a petition or affidavit, filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must, rather than is required to, be supported by an affidavit sworn to by a person with personal knowledge and stating, rather than is required to state, facts sufficient to satisfy a person of ordinary prudence and caution that continuation in the home and time needed for an adversary hearing or to make efforts to prevent or eliminate the need for the removal of the child would be contrary to the child's welfare. Makes a conforming change.

SECTION 15. Amends Section 262.102(a), Family Code, to provide that the restraining order a court may issue under this section is one without prior notice and a hearing. Adds language to provide that for a court to order a restraining order under this section, the court must find that the child has been a victim of neglect. Makes a conforming change.

SECTION 16. Amends Section 262.106, Family Code, by adding Subsection (d), to provide that for the purpose of determining under Subsection (a) the first working day after the date the child is taken into possession, the child is considered to have been taken into possession by DPRS on the expiration of the five-day period permitted under Section 262.007(c) or 262.110(b), as amended by this Act, as appropriate.

SECTION 17. Amends Section 262.109(d), Family Code, to add language to provide that the written notice may be waived by the court at the initial hearing for a good cause.

SECTION 18. Amends Section 262.110, Family Code, by adding Subsection (b), to authorize DPRS, until a person entitled to possession of the child takes possession of the child, to retain possession of the child

without a court order for not more than five days. Requires DPRS on the expiration of the fifth day, if a person entitled to possession does not take possession of the child, to take action under this chapter as if the department took possession of the child under Section 262.104.

SECTION 19. Amends Chapter 262B, Family Code, by adding Section 262.113, as follows:

Sec. 262.113. **FILING SUIT WITHOUT TAKING POSSESSION OF CHILD.** Provides that an original suit filed by a governmental entity that requests to take possession of a child after 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 reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home and that allowing the child to remain in the home would be contrary to the child's welfare.

SECTION 20. Amends Section 262.201, Family Code, by adding Subsection (g), to provide that for the purpose of determining under Subsection (a) the 14th date after the date the child is taken into possession, a child is considered to have been taken into possession by DPRS on the expiration of the five-day period permitted under Section 262.007(c) or 262.110(b), as amended by this Act, as appropriate.

SECTION 21. Amends Section 262.2015, Family Code, as follows:

Sec. 262.2015. New heading: **AGGRAVATED CIRCUMSTANCES.** Adds language to authorize the court to waive the requirement of a service plan and the requirement to make reasonable efforts to return the child to a parent and accelerate the trial schedule to result in a specified final order, if the court finds that all reasonable efforts have been made to return the child to a parent or that the parent has subjected the child to aggravated circumstances. Authorizes the court to find under Subsection (a) that a parent has subjected the child to aggravated circumstances if the parent abandoned the child without identification or as a means for identifying the child, rather than if the court orders at the conclusion of the full adversary hearing that the child may not be placed in the child's home; the child is a victim of serious bodily injury or sexual abuse inflicted by the parent or by another person with the parent's consent; or the parent has engaged, rather than a party to the suit is believed to have engaged, in conduct against the child or against another child of the parent that would constitute an offense under certain specified provisions of the Penal Code. Includes Sections 19.02, 19.03, and 19.04 among those provisions. Makes conforming changes.

SECTION 22. Amends Section 262.203, Family Code, to add language to require the court that rendered the temporary order to order transfer of the suit from the court if grounds exist for mandatory transfer from the court of continuing, exclusive jurisdiction under Section 155.201, or order transfer of the suit to the court having venue of the suit under Chapter 103, if grounds exist for transfer based on improper venue. Authorizes a motion to transfer, notwithstanding Section 155.204 and relating to a suit filed under this, to be filed separately from the petition and provides that it is timely if filed while the case is pending, rather than if made at any time after the date the suit was filed. Provides that notwithstanding Sections 6.407 and 103.002, a court exercising jurisdiction under this chapter is not required to transfer the suit to a court in which a parent has filed a suit for dissolution of marriage before a final order for the protection of the child has been rendered under Chapter 263E.

SECTION 23. Amends Chapter 262C, Family Code, by adding Section 262.205, as follows:

Sec. 262.205. **HEARING WHEN CHILD NOT IN POSSESSION OF GOVERNMENTAL ENTITY.** Authorizes a court, in a suit requesting possession of a child after notice and hearing, to render a temporary restraining order as provided by Section 105.001. Requires that the suit be promptly set for hearing. Authorizes the court, after the hearing, to grant the request to remove the child from the person entitled to possession of the child if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home and allowing the child to remain in the home would be contrary to the child's welfare. Requires the court to issue an appropriate temporary order under Chapter 105, and inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child, if the court orders removal of the child from the child's home. Authorizes the court to render a temporary order without regard to whether notice of the citation has been published, if citation by publication is required for a parent or alleged or probable father in an action under this chapter because the location of the person is unknown. Requires

the court to render a protective order for the child under Title 4, if the court finds that the child requires protection from family violence by a member of the child's family or household.

SECTION 24. Amends Section 263.101, Family Code, to specify that the date DPRS or other agency appointed as the managing conservator of a child shall file a service plan is a date no greater than 45 days after the date the court renders a temporary order appointing DPRS as temporary managing conservator of a child.

SECTION 25. Amends Section 263.105(a), Family Code, to delete existing text requiring the service plan currently in effect to be filed along with the next required status report.

SECTION 26. Amends Section 263.201, Family Code, to require the court to hold a status hearing to review the child's status and the service plan, rather than the permanency plan, developed for the child not later than a specified date. Provides that a status hearing is not required if the court holds an initial permanency hearing under Section 262.2015 before the date a status hearing is required by this section.

SECTION 27. Amends Section 263.202, Family Code, by adding Subsection (d), to require the court to consider whether to waive the service plan under Section 262.2015, if a service plan with respect to a parent has not been filed with the court.

SECTION 28. Amends Section 264.401, Family Code, by adding Subsection (e), to prohibit DPRS from providing supervision for visitation in a child custody matter unless DPRS is a petitioner or intervener in the underlying suit.

SECTION 29. Amends Section 154.053, Civil Practice and Remedies Code, by adding Subsection (d), to provide that each participant, including the impartial third party, to an alternative dispute resolution procedure is subject to the requirements of Chapter 261B, Family Code, and 48C, Human Resources Code.

SECTION 30. Amends Section 154.073, Civil Practice and Remedies Code, by amending Subsection (a) and adding Subsection (e), to include Subsection (e) as an exception to this subsection. Provides that this section does not affect the duty to report abuse or neglect under, Chapter 261B, Family Code, and abuse exploitation, or neglect under, Chapter 48C, Human Resources Code.

SECTION 31. Repealer: Sections 263.003 and 263.004, Family Code (Memorandum of Understanding on Services for Multiproblem Children and Youth) and (Allocation of State Funds).

SECTION 32. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 33. Emergency clause.