

## BILL ANALYSIS

Senate Research Center  
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C.S.S.B. 1415  
By: Hughes  
Health & Human Services  
5/4/2017  
Committee Report (Substituted)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Parent-Child Protection Act protects children from certain investigations and removals and retains parental rights in the legal process by clarifying the standards that must be met before a child is removed from his or her home. It also closes loopholes in current law that allow investigators to bypass deadlines and other necessary mandates without specific measures of accountability. Finally, it provides additional protections to families and parents by reforming the legal procedure to allow families to give an effective defense while remaining innocent until proven guilty.

The Parent-Child Protection Act:

1. Allows the court, for good cause shown, to postpone a show cause hearing for up to a week when requested by the parent or the parent's attorney;
2. Disallows the filing of a suit to terminate the parental rights of both parents when there is only evidence of abuse against one parent;
3. Prohibits courts from requiring parents to pay child support costs during the pendency of a suit;
4. Disallows the use of the broad-form jury charge and requires that parents be convicted of a specific allegation agreed upon by the jury;
5. Requires cases regarding the same children and same Child Protective Services (CPS) incident to be heard by the same judge/court;
6. Enforces the current one-year deadline on CPS cases by automatically dismissing the suit without a court order if the case is not completed by the deadline; and
7. Prohibits ex-parte hearings unless specifically authorized in the Family Code.

(1) Allowing the court to postpone a show cause hearing for up to one week when requested by the parent or the parent's attorney ensures that parents are allowed adequate time to prepare for the hearing or to hire an attorney to defend them.

Section 262.201(a), Family Code, requires that within 14 days of a child being taken into possession by the governmental entity, a full adversary hearing ("show cause" hearing) shall be held. Unfortunately, parents often are not notified of the full adversary hearing until shortly before the hearing takes place. This does not allow the parent adequate time to respond to the petition and prepare for the hearing or, if the parent hires an attorney, for the attorney to respond to the petition and prepare for the hearing.

Currently, Section 262.201(a-3), Family Code, does allow the court to postpone the full adversary hearing up to 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. However, the law only allows this in the cases where the parent is indigent. The Parent-Child Protection Act solves this problem by allowing the court to grant the same extension to all parents.

(2) Disallowing the filing of a suit by CPS against both parents when there is only evidence of abuse/neglect against one parent. Preventing the filing of suit against both parents when only one has been abusive or neglectful protects both the parent and the child from separation between a fit, loving parent and that parent's child.

CPS refers to a parent involved in a suit who has not committed abuse or neglect as the "non-offending" parent. However, it is not uncommon for CPS to file a suit for termination against both parents even when there was only evidence of abuse or neglect against one. Thus, even though the second parent, the "non-offending parent," may be a fit, loving parent, they are still often subject to a suit for termination of their parental rights.

The separation of a fit parent and their child, either through the temporary removal of the child or through the final termination of the parent-child relationship, is devastating to both the child and the family. For this reason, it is paramount that CPS not file for termination against both parents unless there is evidence of abuse or neglect against both parents.

The bill prevents CPS from filing for termination against a non-offending parent and prevents the court from terminating parental rights unless there is evidence of abuse and neglect against that parent. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1415 amends current law relating to the child protective service functions of the Department of Family and Protective Services.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 155.201, Family Code, by adding Subsection (d), to require the court of continuing, exclusive jurisdiction, on receiving notice that a court exercising jurisdiction under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) has ordered the transfer of a suit under Section 262.203(a)(2), to, pursuant to the requirements of Section 155.204(i), transfer the proceedings to the court in which the suit under Chapter 262 is pending.

SECTION 2. Amends Section 155.204(i), Family Code, as follows:

(i) Requires the Department of Family and Protective Services (DFPS), rather than authorizes a party, if a transfer order has been signed by a court exercising jurisdiction under Chapter 262, to file the transfer order with the clerk of the court of continuing, exclusive jurisdiction. Requires the clerk of the court of continuing, exclusive jurisdiction, on receipt and without a hearing or further order from the court, to transfer the files as provided by this subchapter (Transfer of Continuing, Exclusive Jurisdiction).

SECTION 3. Amends Section 161.206, Family Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes the court, in a suit filed by DFPS seeking termination of the parent-child relationship for both parents of the child, to order termination of the parent-child relationship for a parent only if the court finds by clear and convincing evidence grounds for the termination of the parent-child relationship for that parent. Requires that an order rendered under this subsection state the grounds for terminating the parent-child relationship for that parent.

SECTION 4. Amends Section 262.201, Family Code, by amending Subsection (a) and adding Subsection (a-5), as follows:

(a) Requires that a full adversary hearing be held not later than a certain date, unless the child has already been returned to a certain person entitled to possession and the

temporary order, if any, has been dissolved and unless the court grants an extension under Subsection (a-3) (relating to authorizing the court to postpone the full adversary hearing for not more than seven days from a certain date and to shorten or lengthen a certain extension under certain conditions) or (a-5).

(a-5) Authorizes the court, if a parent who is not indigent appears in opposition to the suit, for good cause shown, to postpone the full adversary hearing for not more than 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. Provides that a postponement under this subsection is subject to the limits and requirements prescribed by Subsection (a-3).

SECTION 5. Amends Section 262.203(a), Family Code, as follows:

(a) Requires the court that rendered the temporary order, on the motion of a party or the court's own motion, if applicable, and in accordance with procedures provided by Chapter 155 (Continuing, Exclusive Jurisdiction; Transfer) to:

(1) transfer the suit to the court of continuing, exclusive jurisdiction, if any, if the court finds that the transfer is necessary for the convenience of the parties and is in the best interest of the child;

(2) order transfer of the suit from the court of continuing, exclusive jurisdiction, rather than order transfer of the suit from the court of continuing, exclusive jurisdiction if grounds exist for mandatory transfer from that court under Section 155.201 (Mandatory Transfer); or

(3) makes no changes to this subdivision.

SECTION 6. Amends Subchapter C, Chapter 262, Family Code, by adding Section 262.206, as follows:

Sec. 262.206. EX PARTE HEARINGS PROHIBITED. Prohibits a hearing held by a court in a suit under this chapter from being ex parte, unless otherwise authorized by this chapter or other law.

SECTION 7. Amends Section 263.401, Family Code, as follows:

Sec. 263.401. DISMISSAL AFTER ONE YEAR; NEW TRIALS; EXTENSION. (a) Provides that the court's jurisdiction over a certain suit, unless the court has taken certain actions, on a certain date, is terminated and the suit is automatically dismissed without a court order, rather than requires the court, unless the court has taken certain actions, on a certain date, to dismiss a certain suit.

(b) Requires the court, if the court retains the suit on the court's docket, to render an order in which the court, among certain other actions, schedules the new date on which the suit will be automatically dismissed if the new trial has not commenced.

(b-1) Requires the court, under certain circumstances, to retain the suit on the court's docket and render an order in which the court, among certain other actions, schedules a new date on which the suit will be automatically dismissed under certain other circumstances.

(c) Provides that the court's jurisdiction over the suit, if the court grants an extension under Subsection (b) or (b-1) but does not commence the trial on the merits before the dismissal date, is terminated and the suit is automatically dismissed without a court order, rather than requiring the court, if the court grants an extension under Subsection (b) or (b-1) but does not commence the trial on the merits before the dismissal date, to dismiss the suit.

(d) Requires the clerk, on dismissal of the suit, to notify each party of the dismissal.

SECTION 8. Repealer: Section 263.402(b) (relating to providing that a certain party to a suit waives the right to object to the court's failure to dismiss the suit and that a motion to dismiss is timely under certain conditions), Family Code.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2017.