

## BILL ANALYSIS

Senate Research Center  
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S.B. 999  
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Health & Human Services  
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### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Chapter 262, Family Code, there are three different ways a child might be removed from his or her parent or caregiver. Each situation has a corresponding set of requirements for the court hearing and the specific judicial findings a court must make before it gives the Department of Family and Protective Services (DFPS) custody of a child.

- Emergency removal with court order (Section 262.101).
- Emergency removal without court order (Section 262.104).
- Non-emergency removal with prior court order (Section 262.113).

Section 262.201 governs hearings related to the first two types of removals, while Section 262.205 governs hearings related to the third. The procedural and due process requirements are not identical. For example, an affidavit in support of a petition for removal in an emergency with or without a court order must state that there is immediate danger to a child's physical health or safety. An affidavit supporting a petition for removal under the other scenario, however, does not have to mention "immediate danger."

Hearings under Section 262.201 are referred to as "adversary" hearings. The hearing under Section 262.205 is referred to as a "show cause" hearing.

S.B. 999 would clarify and align language affecting petitions, evidence, and orders governed by Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child).

The bill would change the hearing terminology from "adversary" hearing to "show cause" hearing throughout the chapter. This is done to accurately reflect the purpose of the hearing: for the court to determine whether DFPS has met its burden in showing there is sufficient cause to remove the children from the home. It further communicates to affected parties that the goal of the hearing is not to determine who prevails in an adversarial process but to ensure children are safe from harm.

In addition to the hearing terminology change and some statutory clean-up for purposes of clarity, the bill would make the following substantive changes:

It provides that an affidavit supporting a petition filed after taking possession of a child in an emergency (without a court order) state facts related to reasonable efforts made to avoid removal. This is intended to provide statutory guidance to judges and attorneys that is currently absent from the code.

It also provides a deadline by which a court must hear a petition for removal filed in a non-emergency situation as well as a standard of proof for determining whether there is continuing danger to the physical health and safety of a child if the child were to remain in the home. As with emergency removals involving immediate danger, the court may consider in a non-emergency hearing whether a household in which the child would be allowed to remain includes a person who has abused or neglected another child and in so doing caused serious injury or death, or sexually abused another child.

As proposed, S.B. 999 amends current law relating to procedures for taking possession of a child and for certain hearings in a suit affecting the parent-child relationship involving 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 7.029(a), Education Code, as follows:

(a) Requires the memorandum of understanding between the Texas Education Agency (TEA) and the Department of Family and Protective Services (DFPS) to require, among certain provisions, that DFPS provide TEA each year with demographic information regarding individual students who during the preceding school year were in the conservatorship of DFPS following a show cause hearing, rather than an adversarial hearing, under Section 262.201 (Full Adversary Hearing; Findings of the Court), Family Code.

SECTION 2. Amends Section 29.153(b), Education Code, as follows:

(b) Provides that a child is eligible for enrollment in a prekindergarten class under this section if the child is at least three years of age and:

(1) through (5) makes no changes to these subdivisions; or

(6) is or ever has been in conservatorship of DFPS following a show cause hearing, rather than an adversary hearing, held as provided by Section 262.201, Family Code.

SECTION 3. Amends Section 61.0909(b), Education Code, as follows:

(b) Requires the memorandum of understanding between the Texas Higher Education Coordinating Board (THECB) and DFPS to require, among certain provisions, DFPS to provide THECB each year with demographic information regarding individual students enrolled at institutions of higher education who were formerly in the conservatorship of DFPS following a show cause hearing, rather than an adversarial hearing, under Section 262.201, Family Code.

SECTION 4. Amends Section 105.001(h), Family Code, as follows:

(h) Authorizes an order under Subsection (a)(1) (relating to authorizing the court to make a temporary order for the temporary conservatorship of the child) to be rendered without notice and a show cause hearing, rather than an adversary hearing, if the order is an emergency order sought by a governmental entity under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child).

SECTION 5. Amends Section 107.011(a), Family Code, to require the court, except as otherwise provided by this subchapter (Appointment in Certain Suits), in a suit filed by the governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child, to appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the show cause hearing, rather than full adversary hearing.

SECTION 6. Amends Section 107.012, Family Code, to require the court, in a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, to appoint an attorney ad litem to represent the interests of the child

immediately after the filing, but before the show cause hearing, rather than full adversary hearing, to ensure adequate representation of the child.

SECTION 7. Amends Section 107.0141(a) and (c), Family Code, as follows:

(a) Authorizes the court to appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at a certain time and ending on the court's determination of whether the parent is indigent before commencement of the show cause hearing, rather than full adversary hearing.

(c) Makes a conforming change.

SECTION 8. Amends Section 262.011, Family Code, as added by Chapter 338 (H.B. 418), Acts of the 84th Legislature, Regular Session, 2015, as follows:

Sec. 262.011. PLACEMENT IN SECURE AGENCY FOSTER HOME OR SECURE AGENCY FOSTER GROUP HOME. Authorizes a court in an emergency, initial, or show cause hearing, rather than full adversary hearing, conducted under this chapter to order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with Section 42.0531 (Secure Agency Foster Homes and Secure Agency Foster Group Homes), Human Resources Code, if the court makes certain findings pertaining to the child.

SECTION 9. Amends Section 262.101, Family Code, as follows:

Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF CHILD. Requires an original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and hearing to 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) makes a nonsubstantive change;

(2) creates this subdivision from existing text and makes a nonsubstantive change;

(3) redesignates existing Subdivision (2) as Subdivision (3) and provides there is no time, consistent with the physical health or safety of the child, for a show cause hearing, rather than full adversary hearing, under Subchapter C; and

(4) redesignates existing Subdivision (3) as Subdivision (4) and makes no other changes to this subdivision.

SECTION 10. Amends Sections 262.1015(b) and (d), Family Code, as follows:

(b) Authorizes a court to issue a temporary restraining order in a suit by DFPS for removal of an alleged perpetrator under Subsection (a) (relating to requiring DFPS to file a petition for the removal of the alleged perpetrator from the residence of the child rather than attempt to remove the child from the residence) if DFPS's petition states facts sufficient to satisfy the court that, among certain provisions there is no time, consistent with the physical health or safety of the child, for a show cause hearing, rather than an adversary hearing.

(d) Provides that a temporary restraining order under this section expires not later than the 14th day after the date the order was rendered, unless the court grants an extension under Section 262.201(e) (relating to placement of the child removed from the child's custodial parent), rather than 262.201(a-3).

SECTION 11. Amends Section 262.102(a), Family Code, as follows:

(a) Requires a court, 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) (relating to authorizing a court to make an order for the temporary conservatorship of the child) 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, to find that:

(1) makes a nonsubstantive change;

(2) creates this subdivision from existing text and makes a nonsubstantive change;

(3) redesignates existing Subdivision (2) as Subdivision (3) and provides that there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a show cause hearing, rather than full adversary hearing, under Subchapter C; and

(4) redesignates existing Subdivision (3) as Subdivision (4) and makes no other changes to this subdivision.

SECTION 12. Amends Section 262.103, Family Code, to change a reference to Section 262.201(a-3) to 262.201(e).

SECTION 13. Amends Section 262.105, Family Code, as follows:

Sec. 262.105. FILING PETITION AFTER TAKING POSSESSION OF CHILD IN EMERGENCY. (a) Requires the person taking the child into possession when a child is taken into possession without a court order, without unnecessary delay, to:

(1) makes a nonsubstantive change; and

(2) reques an initial hearing to be held by no later than the first business, rather than working, day after the date the child is taken into possession. Deletes existing Subdivision (2) regarding a request to the court to appoint an attorney ad litem for the child, and redesignates existing Subdivision (3) as Subdivision (2).

(b) Requires an original suit filed by a governmental entity after taking possession of a child under Section 262.104 (Taking Possession of a Child in Emergency Without a Court Order) to 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 of certain circumstances pertaining to the child.

SECTION 14. Amends Sections 262.106(a), (b), and (d), Family Code, as follows:

(a) Requires the court in which a suit has been filed after a child has been taken into possession without a court order by a governmental entity to hold an initial hearing on or before the first business, rather than working, day after the date the child is taken into possession. Makes conforming changes.

(b) Authorizes the initial hearing to be ex parte and proof to be by sworn petition or affidavit if a show cause hearing, rather than full adversary hearing, is not practicable.

(d) Makes a conforming change.

SECTION 15. Amends Section 262.107(a), Family Code, as follows:

(a) Requires the court to 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) one of the following circumstances exists:

(A) creates this paragraph from existing text and make nonsubstantive change; or

(B) creates this paragraph from existing text; the evidence shows that:

(i) creates this subparagraph from existing text and makes no further changes to this subparagraph;

(ii) the parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child; or

(iii) 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) and (3) makes no changes to these subdivisions.

SECTION 16. Amends Section 262.109(b), Family Code, to change a reference to business day to working day.

SECTION 17. Amends Subchapter B, Chapter 262, Family Code, by adding Section 262.1131, as follows:

Sec. 262.1131. TEMPORARY RESTRAINING ORDER BEFORE SHOW CAUSE HEARING. Authorizes the court, in a suit filed under Section 262.113 (Filing Suit Without Taking Possession of Child), to render a temporary restraining order as provided by Section 105.001 (Temporary Orders Before Final Order).

SECTION 18. Amends Sections 262.114(a), (a-1), and (a-2), Family Code, by changing references to full adversary hearing to show cause hearing.

SECTION 19. Amends the heading to Subchapter C, Chapter 262, Family Code, to read as follows:

#### SUBCHAPTER C. SHOW CAUSE HEARING

SECTION 20. Amends Section 262.201, Family Code, as follows:

Sec. 262.201. New heading: SHOW CAUSE HEARING; FINDINGS OF THE COURT.  
(a) Requires a show cause, rather than full adversary, hearing to be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension under Subsection (e), rather than Subsection (a-3), in a suit filed under Section 262.101 or 262.105 (Filing Petition After Taking Possession of Child in Emergency), unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved.

(b) Requires a show cause hearing in a suit filed under Section 262.113 requesting possession of a child to be held not alter than the 30th day after the date the suit is filed.

(c) Redesignates existing Subsection (a-1) as Subsection (c) and makes conforming changes.

(d) Redesignates existing Subsection (a-2) as Subsection (d) and makes conforming changes.

(e) Redesignates existing Subsection (a-3) as Subsection (e) and makes conforming changes.

(f) Redesignates existing Subsection (a-4) as Subsection (f) and makes conforming changes.

(g) Redesignates existing Subsection (b) as Subsection (g). Requires the court in a suit filed under Section 262.101 or 262.105, at the conclusion of the show cause, rather than full adversary, hearing, to order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution of certain circumstances pertaining to the child.

(h) Authorizes the court, in determining whether there is continuing danger to the physical health or safety of the child under Subsection (g), to consider whether the household to which the child would be returned or in which the child would be allowed to remain includes a person who has abused or neglected another child in a manner that caused serious injury to or the death of the other child or includes a person who has sexually abused another child.

(i) Redesignates existing Subsection (c) as Subsection (i). Requires the court in a suit filed under Section 262.101 or 262.105, if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, to issue an appropriate temporary order under Chapter 105 (Settings, Hearings, and Orders).

(j) Authorizes a court in suit filed under Section 262.113, at the conclusion of the show cause hearing, to grant the request to remove the child from the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession of the child if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that continuation of the child in the home would be contrary to the child's welfare and that 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.

(k) Requires the court, if the court finds that the child requires protection from family violence, as that term is defined by Section 71.004 (Family Violence), by a member of the child's family or household, to render a protective order for the child under Title 4 (Protective Orders and Family Violence).

(l) Creates Subsection (l) from existing text and makes no further changes to this subsection.

(m) Creates Subsection (m) from existing text. Deletes existing text requiring the court, if the court finds that the child requires protection from family violence by a member of the child's family or household, to render a protective order under Title 4 for the child, defining "family violence." Deletes existing Subsection (d), relating to authorizing the court to take certain consideration in determining whether there is a continued danger to the physical health or safety of the child.

(n) Redesignates existing Subsection (e) as Subsection (n) and makes no other changes to this subsection.

(o) Redesignates existing Subsection (f) as Subsection (o) and makes no other changes to this subsection.

(p) Redesignates existing Subsection (g) as Subsection (p) and makes no other changes to this subsection.

SECTION 21. Amends Section 262.202, Family Code, to change a reference to full adversary hearing to show cause hearing.

SECTION 22. Amends Section 263.0021(c), Family Code, to change a reference to full adversary hearing to show cause hearing.

SECTION 23. Amends Section 263.004(b), Family Code, as follows:

(b) Requires that not later than the fifth day after the date a show cause hearing under Section 262.201, rather than an adversary hearing under Section 262.201 or 262.205 (Hearing When Child Not in Possession of Governmental Entity), is concluded, the information required by Subsection (a) (relating to requiring DFPS to file with the court names and contact information for certain persons) to be filed with the court and a copy to be provided to the school the child attends.

SECTION 24. Repealer: Section 262.205 (Hearing When Child Not in Possession of Governmental Entity), Family Code.

SECTION 25. Makes application of this Act prospective.

SECTION 26. Effective date: September 1, 2017.