

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 999  
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Health & Human Services  
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Committee Report (Substituted)

### **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).

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.

Finally, the bill specifies that in a non-emergency removal case the court can issue a temporary order if it finds there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person entitled to possession of child, continuation of the child in the home would be contrary to the child's welfare, and 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.

C.S.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 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 full adversary hearing under Subchapter C; and
- (4) redesignates existing Subdivision (3) as Subdivision (4) and makes no other changes to this subdivision.

SECTION 2. Amends Section 262.1015(d), Family Code, to provide 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 3. 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 full adversary hearing under Subchapter C; and
- (4) redesignates existing Subdivision (3) as Subdivision (4) and makes no other changes to this subdivision.

SECTION 4. Amends Section 262.103, Family Code, to change a reference to Section 262.201(a-3) to 262.201(e).

SECTION 5. 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) request 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 stating facts sufficient to satisfy a person of ordinary prudence and caution of certain circumstances pertaining to the child.

SECTION 6. Amends Sections 262.106(a) 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.

(d) Makes a conforming change.

SECTION 7. 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) the evidence shows that one of the following circumstances exists:

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

(B) creates this paragraph from existing text and deletes existing text providing that the evidence shows that;

(C) 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

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

SECTION 8. Amends Section 262.109(b), Family Code, to change a reference to business day to working day.

SECTION 9. Amends Subchapter B, Chapter 262, Family Code, by adding Section 262.1131, as follows:

Sec. 262.1131. TEMPORARY RESTRAINING ORDER BEFORE FULL ADVERSARY 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 10. Amends Section 262.201, Family Code, as follows:

Sec. 262.201. FULL ADVERSARY HEARING; FINDINGS OF THE COURT. (a) Requires a 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 full adversary hearing in a suit filed under Section 262.113 requesting possession of a child to be held not later than the 30th day after the date the suit is filed.

(c) Redesignates existing Subsection (a-1) as Subsection (c).

(d) Redesignates existing Subsection (a-2) as Subsection (d).

(e) Redesignates existing Subsection (a-3) as Subsection (e) and includes a reference to Section 262.1131.

(f) Redesignates existing Subsection (a-4) as Subsection (f).

(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 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) Redesignates existing Subsection (c) as Subsection (h). 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).

(i) Authorizes the court, in determining whether there is a 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 includes a person who:

(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) has sexually abused another child.

(j) Requires the court, in a suit filed under Section 262.113, at the conclusion of the full adversary hearing, to issue an appropriate temporary order under Chapter 105 if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person entitled to possession of the child and continuation of the child in the home would be contrary to the child's welfare; and

(2) 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.

(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 this subsection from existing text and makes no further changes to this subsection.

(m) Creates this subsection 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). Requires the court to place a child removed from the child's custodial parent with the child's noncustodial parent unless the court finds that:

(1) there is a danger to the physical health or safety of the child caused by an act or failure to act of the child's noncustodial parent and placement of the child with the child's noncustodial parent would be contrary to the child's welfare;

(2) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to place the child with the child's noncustodial parent; and

(3) it is not in the best interest of the child to be placed with the child's noncustodial parent.

(o) Creates this subsection from existing text. Requires the court, if placement with the noncustodial parent is inappropriate, to place a child removed from the child's custodial parent with a relative of the child unless placement with a relative is not in the best interest of the child. Makes nonsubstantive changes.

(p) Redesignates existing Subsection (f) as Subsection (p) and makes no further changes to this subsection.

(q) Redesignates existing Subsection (g) as Subsection (q) and makes no further changes to this subsection.

SECTION 11. Repealer: Section 262.205 (Hearing When Child Not in Possession of Governmental Entity), Family Code.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2017.