

BILL ANALYSIS

Senate Research Center

H.B. 2308
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Health & Human Services
5/17/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The removal of a child from an abusive or neglectful home is an intensely traumatic event. While state law allows for parent and caregiver removal by court order, many parents and caregivers may be willing to voluntarily choose to have themselves removed in order to keep the child in the home in efforts to mitigate trauma to the child. There have been calls to provide a mechanism in family law through which an agreement may be made to prioritize the child's needs in these situations.

H.B. 2308 seeks to address this issue by providing a parent or caregiver who is accused of abuse or neglect the option to voluntarily remove themselves from the home in lieu of the child's removal.

H.B. 2308 amends current law relating to procedures in certain suits affecting the parent-child relationship filed by 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. (a) Creates this subsection from existing text. Requires that an original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing 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) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change;

(4) the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section 262.1015 (Removal of Alleged Perpetrator; Offense) or 262.1016 or a protective order issued under Title 4 (Protective Orders and Family Violence);

(5) placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L (Parental Child Safety Placements), Chapter 264 (Child Welfare Services) was offered but refused, was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation, or would pose an immediate danger to the physical health or safety of the child; and

(6) creates this subdivision from existing text and makes no further changes.

(b) Requires that the affidavit required by Subsection (a) describe all reasonable efforts that were made to prevent or eliminate the need for the removal of the child.

SECTION 2. Amends Subchapter B, Chapter 262, Family Code, by adding Section 262.1016, as follows:

Sec. 262.1016. AGREED ORDER FOR REMOVAL OF ALLEGED PERPETRATOR.

(a) Authorizes an alleged perpetrator of abuse or neglect to agree in writing to an order under Section 262.1015 requiring the alleged perpetrator to leave the residence of the child. Provides that an agreement under this section is subject to the approval of the court.

(b) Requires that an agreed order contain a certain statement. Sets forth required language for an agreed order under this section.

(c) Prohibits an agreed order under this section from being used against an alleged perpetrator as an admission of child abuse or neglect.

(d) Provides that an agreed order under this section is enforceable civilly or criminally but is not enforceable as a contract.

(e) Authorizes a person affected by an agreed order under this section, at any time, to request the court to terminate the order. Requires the court to terminate the agreed order on finding the order is no longer needed and terminating the order is in the best interest of the child.

SECTION 3. Amends Section 262.102(a), Family Code, as follows:

(a) Provides that before a court is authorized, without prior notice and a hearing, to issue a temporary order for the conservatorship of a child under Section 105.001(a)(1) (relating to the temporary conservatorship of a 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, the court is required to find that:

(1) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change;

(4) the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section 262.1015 or 262.1016 or a protective order issued under Title 4;

(5) placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264 was offered but refused, was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation, or would pose an immediate danger to the physical health or safety of the child; and

(6) creates this subdivision from existing text and makes no further changes.

SECTION 4. Amends Section 262.105, Family Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that 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) be supported by an affidavit stating facts sufficient to satisfy a person of ordinary prudence and caution that:

(1) makes no changes to this subdivision;

(2) based on the affiant's personal knowledge:

(A) makes no changes to this paragraph;

(B) makes a nonsubstantive change;

(C) the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section 262.1015 or 262.1016 or a protective order issued under Title 4;

(D) placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264, was offered but refused; was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or would pose an immediate danger to the physical health or safety of the child; and

(E) creates this subdivision from existing text and makes no further changes.

(c) Requires that the affidavit required by Subsection (b) describe all reasonable efforts that were made to prevent or eliminate the need for the removal of the child.

SECTION 5. 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) makes no changes to this subdivision;

(2) makes a nonsubstantive change;

(3) the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section 262.1015 or 262.1016 or a protective order issued under Title 4;

(4) placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264 was offered but refused, was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation, or would pose an immediate danger to the physical health or safety of the child; and

(5) creates this subdivision from existing text and makes no further changes.

SECTION 6. Amends Section 262.113, Family Code, as follows:

Sec. 262.113. FILING SUIT WITHOUT TAKING POSSESSION OF CHILD. (a) Creates this subdivision from existing text and makes no further changes.

(b) Requires that the affidavit required by Subsection (a) describe all reasonable efforts that were made to prevent or eliminate the need for the removal of the child.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2021.