

BILL ANALYSIS

Senate Research Center

H.B. 2216
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The separation of a family is a significantly traumatic event that should not happen unless absolutely necessary. In 1978, the federal government passed the Indian Child Welfare Act (ICWA) in response to evidence that Native American children were being separated from their families at a disproportionate rate to other groups of people. In 2023, ICWA was affirmed constitutional by the U.S. Supreme Court and has long been considered the gold standard for child welfare policies and practices that should be afforded to all children. H.B. 2216 seeks to enact a "gold standard" statute for conducting child welfare investigations and conservatorship cases in Texas by revising certain procedures and grounds related to the removal and placement of children, including the requisite standard for the findings a court must make before ordering termination of the parent-child relationship and the types of actions the Department of Family and Protective Services must take to return a child to their parent or home before a court may order termination of the parent-child relationship.

H.B. 2216 amends current law relating to procedures and grounds related to the removal and placement of children, including for terminating the parent-child relationship, for taking possession of a child, and for certain hearings in a suit affecting the parent-child relationship filed by a governmental entity.

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 161.001, Family Code, by amending Subsections (a), (b), (c), (f), and (g) and adding Subsections (g-1) and (g-2), as follows:

(a) Defines "active efforts."

(b) Authorizes a court to order termination of the parent-child relationship if the court finds beyond a reasonable doubt, rather than by clear and convincing evidence, that certain criteria are met, including that the parent has constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services (DFPS) for not less than six months and DFPS has made active, rather than reasonable, efforts to return the child to the parent.

(c) Makes conforming changes to this subsection.

(f) Prohibits the court, in a suit for termination of the parent-child relationship filed by DFPS, from ordering termination of the parent-child relationship under Subsection (b)(1) (relating to authorizing the court to order termination of the parent-child relationship if the court finds beyond a reasonable doubt that the parent has performed certain actions) unless the court finds beyond a reasonable doubt and describes in writing with specificity in a separate section of the order that DFPS made active efforts to return the child to the parent before commencement of a trial on the merits and despite those active efforts, a continuing danger remains in the home that prevents the return of the child to the parent.

Deletes existing text prohibiting the court, in a suit for termination of the parent-child relationship filed by DFPS, from ordering termination of the parent-child relationship under Subsection (b)(1) unless the court finds by clear and convincing evidence and describes in writing with specificity in a separate section of the order that reasonable efforts to return the child to the parent, including the requirement for DFPS to provide a family service plan to the parent, have been waived under Section 262.2015 (Aggravated Circumstances). Makes nonsubstantive changes.

(g) Requires the court, in a suit for termination of the parent-child relationship filed by DFPS in which DFPS made active efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, to include in a separate section of its order written findings describing with specificity:

(1) creates this subdivision from existing text and makes a conforming change; and

(2) evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of the parent-child relationship will result in serious emotional or physical injury to the child.

(g-1) Provides that, for the purposes of Subsection (g)(2), evidence of the existence of one or more of certain factors by itself does not constitute evidence beyond a reasonable doubt that continuation of the parent-child relationship is likely to result in serious emotional or physical injury to the child.

(g-2) Requires that, for the purposes of Section 161.001 (Involuntary Termination of Parent-Child Relationship), conduct be considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in a substantial risk of death, disfigurement, or bodily injury to the child or an observable and material impairment to the growth, development, or functioning of the child.

SECTION 2. Amends Section 161.003, Family Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Makes conforming changes to this subsection.

(a-1) Defines "active efforts."

SECTION 3. Amends Section 161.101, Family Code, as follows:

Sec. 161.101. PETITION ALLEGATIONS; PETITION AND MOTION REQUIREMENTS. (a) Requires that a petition or motion for the termination of the parent-child relationship specify the underlying facts that support the statutory ground for the termination of the parent-child relationship and that termination is in the best interest of the child.

Deletes existing text providing that a petition for the termination of the parent-child relationship is sufficient without the necessity of specifying the underlying facts if the petition alleges in the statutory language the ground for the termination and that termination is in the best interest of the child.

(b) Provides that a petition or motion filed by DFPS in a suit for termination of the parent-child relationship:

(1) creates this subdivision from existing text and makes no further changes; and

(2) is required to specify evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of

the parent-child relationship will result in serious emotional or physical injury to the child.

(c) Provides that, for the purposes of Subsection (b)(2), evidence of the existence of one or more of certain factors by itself does not constitute evidence beyond a reasonable doubt that continuation of the parent-child relationship is likely to result in serious emotional or physical injury to the child.

(d) Requires that, for the purposes of this section, conduct be considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in a substantial risk of death, disfigurement, or bodily injury to the child or an observable and material impairment to the growth, development, or functioning of the child.

SECTION 4. Amends Sections 161.206(a) and (a-1), Family Code, to make conforming changes.

SECTION 5. Amends Subchapter A, Chapter 262, Family Code, by adding Section 262.0001, as follows:

Sec. 262.0001. DEFINITION; ACTIVE EFFORTS. (a) Defines "active efforts."

(b) Requires that DFPS's active efforts, in cases in which DFPS is involved in a suit affecting the parent-child relationship, involve assisting the parents through the steps of a service plan and with accessing or developing the resources necessary to satisfy the service plan. Requires DFPS to tailor the active efforts to the facts and circumstances of each case, including by performing certain actions.

(c) Requires that the assistance provided under Subsection (b) regarding the parent's service plan be narrowly tailored to address the specific issues identified in the court's order granting DFPS temporary managing conservatorship or ordering DFPS to provide family preservation services.

(d) Provides that DFPS is required to use but is not required to exceed available resources to engage in active efforts as required by this section.

SECTION 6. Amends Section 262.001(b), Family Code, to require that the active efforts under this subsection be evaluated to ensure the efforts are consistent with the circumstances of the removal of the child from the child's home and provide for the child's safety and to make a conforming change.

SECTION 7. Amends Section 262.014, Family Code, as follows:

Sec. 262.014. DISCLOSURE OF CERTAIN EVIDENCE. Requires DFPS, in a suit affecting the parent-child relationship filed under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) by DFPS, rather than on the request of the attorney for a parent who is a party in a suit affecting the parent-child relationship filed under this chapter, or the attorney ad litem for the parent's child, as soon as practicable but not later than the seventh day before the full adversary hearing, to provide electronically to the parent who is a party to the suit, the attorney for the parent who is a party to the suit, and the attorney ad litem for the parent's child:

(1) makes no changes to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions;

(4) a copy of any medical, psychological, psychiatric, or educational records in DFPS' possession related to the suit and submitted to DFPS from any source, including exculpatory records, regardless of whether DFPS will use the records in court; and

(5) a copy of any records relating to consultations under Section 261.3017 (Consultation With Physician Networks and Systems Regarding Certain Medical Conditions) regarding a child who is the subject of the suit, including exculpatory consultation records, regardless of whether DFPS will use the records in court.

SECTION 8. Amends Section 262.101(a), Family Code, to make conforming changes.

SECTION 9. Reenacts Section 262.101(b), Family Code, as added by Chapters 672 (H.B. 968) and 675 (H.B. 1087), Acts of the 88th Legislature, Regular Session, 2023, and amends it to make a conforming change.

SECTION 10. Amends Sections 262.102(a) and (e), Family Code, as follows:

(a) Makes conforming changes to this subsection.

(e) Requires that the temporary order, temporary restraining order, or attachment of a child rendered by the court under Subsection (a) (relating to certain requirements, before the court is authorized to issue a temporary order for the 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) describe with specificity in a separate section the active efforts, consistent with the circumstances and providing for the safety of the child, that were made to prevent or eliminate the need for the removal of the child as required by Subsection (a)(6) (relating to requiring a court, to find that active 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), rather than Subsection (a)(4) (relating to requiring a court, to find that the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator or a protective order).

SECTION 11. Amends Section 262.105(b), Family Code, to make a conforming change.

SECTION 12. Reenacts Section 262.105(c), Family Code, as added by Chapters 672 (H.B. 968) and 675 (H.B. 1087), Acts of the 88th Legislature, Regular Session, 2023, and amends it to make a conforming change.

SECTION 13. Amends Section 262.107, Family Code, by amending Subsections (a) and (c) and adding Subsections (a-1) and (a-2), 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) clear and convincing evidence shows that one of certain circumstances exists;

(2) continuation of the child in the home would be contrary to the child's welfare based on evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of the child in the home will result in serious emotional or physical injury to the child;

(3)-(4) makes no changes to these subdivisions; and

(5) makes a conforming change to this subdivision.

Makes a nonsubstantive change to this subsection.

(a-1) Provides that evidence of the existence of one or more of certain factors by itself does not constitute clear and convincing evidence that continuation of the child in the home is likely to result in serious emotional or physical injury to the child.

(a-2) Requires that, for the purposes of Section 262.107 (Standard for Decision at Initial Hearing After Taking Possession of Child Without a Court Order in Emergency), conduct be considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in a substantial risk of death, disfigurement, or bodily injury to the child or an observable and material impairment to the growth, development, or functioning of the child.

(c) Makes a conforming change to this subsection.

SECTION 14. Amends Section 262.114, Family Code, by amending Subsections (b) and (d) and adding Subsection (e), as follows:

(b) Requires, rather than authorizes, DFPS to place a child with a relative or other designated caregiver identified on the proposed child placement resources form, including any adult identified by the child, if DFPS determines that the placement is in the best interest of the child.

(d) Requires DFPS, in making a placement decision for a child, to give preference to persons in a certain order, including a foster parent with whom the child previously successfully resided while in the temporary managing conservatorship of DFPS, unless there is good cause shown to deviate from the order. Makes nonsubstantive changes.

(e) Prohibits DFPS, in making a determination of whether there is good cause shown to deviate from the preferred placement order under Subsection (d), from considering as part of the best interest determination the socioeconomic status of the individuals with whom DFPS is considering placing the child or ordinary bonding between the child and a previous caregiver related to time spent in a non-preferred placement.

SECTION 15. Amends Subchapter B, Chapter 262, Family Code, by adding Section 262.1141, as follows:

Sec. 262.1141. RIGHT TO INTERVENE. (a) Authorizes a person who qualifies as a placement preference for a child under Section 262.114(d)(1) (relating to requiring DFPS to give preference to a person related to the child by blood, marriage, or adoption in making a placement decision for a child), in a suit filed under Section 262.101 (Filing Petition Before Taking Possession of Child) or 262.105 (Filing Petition After Taking Possession of Child in Emergency) in which DFPS is appointed as the temporary managing conservator of a child who is the subject of the suit, to file a motion to intervene in the suit if DFPS did not place the child with the person.

(b) Requires the court to grant a person's motion to intervene under this section if the court finds the person qualifies for a placement preference under Section 262.114(d)(1) and DFPS, without good cause, placed the child with a person with a lower preference under Section 262.114(d).

(c) Requires DFPS to notify a person described by Subsection (a) in writing of the person's right to intervene.

SECTION 16. Amends Section 262.201, Family Code, by amending Subsections (c), (d), (e), (e-1), (g), (g-1), (g-2), and (h) and adding Subsection (e-2), as follows:

(c) Requires the court, as soon as practicable before commencement of the full adversary hearing, rather than before the commencement of the full adversary hearing, to inform each parent not represented by an attorney of certain rights, including, if a parent is indigent, rather than indigent and appears in opposition to the suit, the right to a court appointed attorney.

(d) Requires the court, if a parent claims indigence, rather than if a parent claims indigence and requests the appointment of an attorney before the full adversary hearing,

to require the parent to complete and file with the court an affidavit of indigence. Makes a conforming change.

(e) Requires, rather than authorizes, the court to, for good cause shown, postpone the full adversary hearing for not more than 30, rather than 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.

(e-1) Requires, rather than 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 30, rather 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.

(e-2) Requires DFPS, if a court postpones or grants a continuance for a full adversary hearing, to immediately modify any existing visitation plan to increase the visitation time for the parent and a child who has been removed. Authorizes visitation through online or electronic communication to satisfy the increased visitation plan requirement under this 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 from whom the child is removed unless the court finds clear and convincing evidence rather than sufficient evidence to satisfy a person of ordinary prudence and caution, that certain actions occurred. Makes conforming changes.

(g-1) Makes a conforming change to this subsection.

(g-2) Makes conforming changes to this subsection.

(h) Makes a conforming change to this subsection.

SECTION 17. Amends Section 262.2015, Family Code, by amending Subsections (a), (b), and (c) and adding Subsection (c-1), as follows:

(a) Prohibits the court from waiving, rather than authorizes the court to waive, the requirement of a service plan and the requirement to make active efforts to return the child to a parent. Makes conforming and nonsubstantive changes.

(b) Deletes existing text authorizing the court to find under Subsection (a) that a parent has subjected the child to aggravated circumstances if the parent has engaged in conduct against the child or another child of the parent that would constitute an offense under certain provisions of the Penal Code, including Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Penal Code, and Section 22.041 (Abandoning or Endangering a Child, Elderly Individual, or Disabled Individual), Penal Code. Makes nonsubstantive changes.

(c) Requires the court, on finding that the parent has subjected the child to aggravated circumstances, rather than that reasonable efforts to make it possible for the child to safely return to the child's home are not required, to at any time before the 30th day after the date of the finding, conduct an initial permanency hearing under Subchapter D (Permanency Hearings), Chapter 263 (Review of Placement of Children Under Care of Department of Family and Protective Services).

(c-1) Requires DFPS, on a court's finding that a parent has subjected the child to aggravated circumstances, to create, in conjunction with the parent and the parent's attorney, if applicable, a limited service plan. Provides that the limited service plan satisfies the requirement that the department make active efforts to return the child to the parent under Section 161.003 (Involuntary Termination: Inability to Care for Child) and

is required to comply with any court order rendered in the case pertaining to bond or supervision and is authorized to contain only tasks that protect the physical and emotional safety and well-being of the child and due process rights of the parent.

SECTION 18. Amends Section 263.202(b), Family Code, to make a conforming change.

SECTION 19. Amends Section 263.306(a-1), Family Code, to make a conforming change.

SECTION 20. Amends Section 263.5031(a), Family Code, to make a conforming change.

SECTION 21. Amends Section 263.602(b), Family Code, to make conforming changes.

SECTION 22. Amends Section 264.0091, Family Code, as follows:

Sec. 264.0091. **USE OF TELECONFERENCING AND VIDEOCONFERENCING TECHNOLOGY.** Requires DFPS, rather than requires DFPS subject to the availability of funds, in cooperation with district and county courts to expand the use of teleconferencing and videoconferencing to facilitate participation by families, medical experts, children, and other individuals in court proceedings, including children for whom DFPS or a licensed child-placing agency has been appointed managing conservator and who are committed to the Texas Juvenile Justice Department.

SECTION 23. Amends Subchapter A, Chapter 264, Family Code, by adding Section 264.020, as follows:

Sec. 264.020. **PLACEMENT OF CHILDREN IN CONSERVATORSHIP OF DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES.** (a) Defines "child."

(b) Requires DFPS, in making the initial or a subsequent placement decision for a child, to give preference to persons in a certain order.

SECTION 24. Makes application of Section 161.101, Family Code, as amended by this Act, prospective.

SECTION 25. Makes application of this Act prospective.

SECTION 26. Makes application of Section 264.020, Family Code, as added by this Act, prospective.

SECTION 27. Provides that, to the extent of any conflict, this Act prevails over another Act of the 89th Legislature, Regular Session, 2025, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 28. Effective date: January 1, 2027.