

BILL ANALYSIS

Senate Research Center

C.S.S.B. 181
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Jurisprudence
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Committee Report (Substituted)

DIGEST

Currently, under Texas' child protective system for the fiscal years 1991-95, on a statewide basis, it took an average of 9.5 months to return a child to a family, 8.7 months to return a child to relatives, and 13.2 months to place a child in long-term substitute care. The time for adoption consummation was over 40 months, with significant variation among regions. The delays and numerous changes during this process are detrimental to a child. Additionally, such findings coincide with the findings of the members of the Governor's Committee to Promote Adoption that the child protective system is not effectively working for many children in Texas. C.S.S.B. 181 requires the Texas Department of Protective and Regulatory Services (DPRS) to prepare a permanency plan for the child when DPRS is given temporary managing conservatorship, sets forth the time when review hearings are to be held, and requires the courts to render a final order on or before the first anniversary of the date the child was placed in the conservatorship of DPRS. Additionally, this bill revises the legal representation of DPRS under Title 5, Family Code, relating to the parent-child relationship and suits affecting the parent-child relationship.

PURPOSE

As proposed, C.S.S.B. 181 revises guidelines involving the conservatorship of a child by the Texas Department of Protective and Regulatory Services.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 262.201(c), Family Code, to require the court, 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, among other items, to inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 2. Amends Section 263A, Family Code, by adding Sections 263.006, 263.007, 263.008 and 263.009, as follows:

Sec. 263.006. **WARNING TO PARENTS.** Requires the court, at the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the court has rendered a temporary order appointing the Texas Department of Protective and Regulatory Services (DPRS) as temporary managing conservator, to inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

Sec. 263.007. **DISMISSAL AFTER ONE YEAR.** Requires the court, unless the court has rendered a final order or granted an extension under this section, on the first Monday after the first anniversary of the date the court rendered a temporary order appointing DPRS as temporary managing conservator, to dismiss the suit affecting the parent-child relationship filed by DPRS that requests termination of the parent-child relationship or requests that DPRS

be named conservator of the child. Authorizes the court, under certain circumstances, to extend the court's jurisdiction of the suit for a period stated in the extension order, but not longer than 180 days after the time described above. Sets forth the required contents of the extension order. Requires the court, if the court grants an extension, to render a final order or dismiss the suit on or before the date specified in the extension order and may not grant an additional extension. Provides that a final order in this section is an order that requires that a child be returned to the child's parent; names a relative of the child or another person as the child's managing conservator; without terminating the parent-child relationship, appoints DPRS as the managing conservator of the child; or terminates the parent-child relationship and appoints a relative of the child, another suitable person, or DPRS as managing conservator of the child.

Sec. 263.008. RETURN OF CHILD TO PARENT OR PLACEMENT WITH RELATIVE. Authorizes the court, notwithstanding Section 263.007, to retain jurisdiction and not render an order dismissing the suit or terminating parental rights as required by that section if the court finds that retaining jurisdiction is in the best interest of the child. Sets forth the required contents of an order in which the court retains jurisdiction under this section.

Sec. 263.009. FINAL ORDER APPOINTING DEPARTMENT AS MANAGING CONSERVATOR. Authorizes the court to render an order appointing DPRS as managing conservator of the child without terminating the parental rights of the child's parents if the court finds that certain conditions exist. Authorizes the court to take into consideration certain factors in determining under this section that termination of the parent-child relationship is not in the best interest of the child. Requires the court, if the court renders an order under this section, to include in the order specific findings regarding the grounds for the order.

SECTION 3. Amends 263.201, Family Code, to require the court to hold a status hearing to review the child's status and the permanency plan developed for the child by the 60th day after the date the court renders a temporary order appointing DPRS as temporary managing conservator of a child, rather than by the 60th day after the date of a full adversary hearing under Chapter 262.

SECTION 4. Amends the heading to Chapter 263D, Family Code, as follows:

SUBCHAPTER D. New heading: PERMANENCY HEARINGS

SECTION 5. Amends Sections 263.301(a) and (b), Family Code, to require notice of a permanency, rather than a review, hearing to be given as provided by certain rules of civil procedure to all persons entitled to notice of the hearing. Provides that certain persons are entitled to at least 10 days notice of a permanency hearing, rather than a hearing to review a child's placement, and are entitled to present evidence and be heard at the hearing, including an attorney ad litem and a volunteer advocate appointed for the child under Chapter 107. Makes conforming changes.

SECTION 6. Amends Section 263.302, Family Code, to require the child to attend each permanency hearing unless the court specifically excuses the child's attendance. Provides that failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing. Makes conforming changes.

SECTION 7. Amends Chapter 263D, Family Code, by adding Section 263.3025, as follows:

Sec. 263.3025. PERMANENCY PLAN. Requires DPRS to prepare a permanency plan for a child for whom DPRS has been appointed temporary managing conservator. Requires DPRS to give a copy of the plan to each person entitled to notice under Section 263.301(b) by the 10th day before the date of the child's first permanency hearing. Requires the permanency plan to contain the information required to be included in a permanency progress report under Section 263.303. Requires DPRS to modify the permanency plan for a child as required by the circumstances and needs of the child.

SECTION 8. Amends Section 263.303, Family Code, as follows:

Sec. 263.303. New heading: PERMANENCY PROGRESS REPORT. Requires DPRS or other authorized agency, by the 10th day before the date for each permanency hearing other than the first permanency hearing, to file with the court and provide to each party, the child's attorney ad litem, and the child's volunteer advocate a permanency report, rather than a status report, unless the court orders a different period providing the report. Sets forth the required recommendation options of the permanency progress report. Deletes certain provisions relating to the required recommendation options of the status report. Makes conforming changes.

SECTION 9. Amends Section 263.304, Family Code, as follows:

Sec. 263.304. New heading: INITIAL PERMANENCY HEARING; TIME. Requires the court, by the 180th day after the date the court renders a temporary order appointing DPRS as temporary managing conservator of a child, rather than after the date of the conclusion of the full adversary hearing, to hold a permanency hearing to review the status of, and permanency plan for, the child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter. Deletes a provision relating to initial review hearing.

SECTION 10. Amends Section 263.305, Family Code, as follows:

Sec. 263.305. New heading: SUBSEQUENT PERMANENCY HEARINGS. Requires a subsequent permanency hearing before entry of a final order, rather than a subsequent review hearing, to be held by the 120th day after the date of the last permanency hearing in the suit. Authorizes the court to order more frequent hearings for good cause shown or on the court's own motion. Deletes the provisions relating to subsequent review hearings.

SECTION 11. Amends Section 263.306, Family Code, as follows:

Sec. 263.306. New heading: PERMANENCY HEARINGS: PROCEDURE. Sets forth the procedures the court is required to follow at each permanency hearing. Deletes the provisions relating to determinations the court is required to make at each review hearing. Makes conforming changes.

SECTION 12. Amends Chapter 263, Family Code, by adding Subchapter E, as follows:

SUBCHAPTER E. PLACEMENT REVIEW HEARINGS

Sec. 263.401. PLACEMENT REVIEW AFTER FINAL ORDER. Require the court, if DPRS has been named as a child's managing conservator in a final order that does not include termination of parental rights, to conduct a placement review hearing at least once every six months until the child becomes an adult. Requires the court, if DPRS has been named as a child's managing conservator in a final order that terminates a parent's parental rights, to conduct a placement review hearing at least once every six months until the date the child is adopted or the child becomes an adult. Requires notice of placement review hearing to be given as provided by Rule 21a, Texas Rules of Civil Procedure, to each person entitled to notice of the hearing. Sets forth the entities and persons who are entitled to not less than 10 days' notice of a placement review hearing. Authorizes the court to dispense with the requirement that the child attend a placement review hearing.

Sec. 263.402. PLACEMENT REVIEW REPORT. Requires DPRS or other authorized agency, no later than the 10th day before the date set for a placement review hearing, to file a placement review report with the court and provide a copy to each person entitled to notice under Section 263.401(d). Authorizes the court, for good cause shown, to order a different time for filing the placement review report or to order that a report is not required for a specific hearing. Sets forth the required contents of the placement review board.

Sec. 263.403. PLACEMENT REVIEW HEARINGS; PROCEDURE. Sets forth the required issues the court is to determine at each placement review hearing.

SECTION 13. Amends Section 264.009, Family Code, to require DPRS, in any action under this title, to be represented in court by the county attorney, the district attorney, or criminal district attorney of the county where the action is brought, rather than the prosecuting attorney who represents the state in criminal cases in the district or county court of the county where the action is brought; or an attorney who is employed by DPRS or who has entered into a contract with DPRS as provided by this section to provide such representation, rather than an attorney. Deletes a provision relating to representation for DPRS in a county with a population of 2,800,000 or more. Authorizes DPRS to enter into a contract with a county attorney, a district attorney, or criminal district attorney to provide reimbursement of the costs of representation of DPRS from any available state or federal funds. Authorizes DPRS to contract with private attorneys to represent DPRS in actions under this title. Authorizes DPRS to employ attorneys to represent DPRS in actions brought under this title. Makes conforming changes.

SECTION 14. Repealers: Section 263.308, Family Code (Parent Unable or Unwilling to Care for Child) and Section 263.309, Family Code (Review After Termination or Relinquishment of Parental Rights).

SECTION 15. Effective date: January 1, 1998. Makes application of this Act retroactive. Requires a court, if DPRS has been appointed temporary managing conservator of a child before the effective date of this Act, to establish a date for dismissal of the suit by the second anniversary of the date of the next hearing conducted under Chapter 263, Family Code, unless the court has rendered a final order before the dismissal date.

SECTION 16. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Revises proposed relating clause.

SECTION 1.

Amends Section 262.201(c), Family Code, to revise the court duties in an adversary hearing involving the parent-child relationship. Deletes proposed Section 161.2025, Family Code, relating to expedited trial in cases of severe abuse, neglect, or drug or alcohol abuse.

SECTION 2.

Amends Section 263A, Family Code, by adding proposed Sections 263.006-009, Family Code, relating to court review of placement of a child under care of DPRS. Deletes proposed changes to Section 263.303, Family Code, relating to status report of a child in the care of DPRS.

SECTION 3.

Amends Section 263.301, Family Code, to revise the time for a status hearing in regard to a child in the care of DPRS. Deletes proposed Section 263.3055, Family Code, relating to court order following one year of conservatorship with DPRS.

SECTION 4.

Amends the heading to Chapter 263D, Family Code. Deletes proposed changes to Section 263.306, Family Code, relating to the procedure of review hearings regarding children in the care of DPRS.

SECTION 5.

Amends Sections 263.301(a) and (b), Family Code, to revise regulations involving permanency hearings, rather than review hearings. Deletes the previous proposed session

law.

SECTIONS 6.

Amends Section 263.302, Family Code, to revise regulations involving permanency hearings.
Deletes previous emergency clause.

SECTIONS 7-14.

Sets forth proposed changes to Chapter 263D, Family Code, in regard to permanency hearings affecting the parent-child relationship. Adds proposed Chapter 263E, Family Code, to set forth regulations for placement review hearings affecting the parent-child relationship. Sets forth proposed changes to Section 264.009, Family Code, regarding legal representation of DPRS under this title. Repeals Sections 263.308 and 263.309, Family Code.

SECTION 15.

Sets forth proposed session law.

SECTION 16.

Sets forth emergency clause.