

## **BILL ANALYSIS**

Senate Research Center  
78R8924 KLA-D

S.B. 1424  
By: Nelson  
Jurisprudence  
4/17/2003  
As Filed

### **DIGEST AND PURPOSE**

As proposed, S.B. 1424 makes various changes to the Texas Family Code that were solicited by the Texas Department of Protective and Regulatory 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 155.201, Family Code, by adding Subsection (d) to provide that Section 262.203 applies to the transfer of a suit filed by the Department of Protective and Regulatory Services (DPRS) under Chapter 262.

SECTION 2. Amends Section 155.202(a), Family Code, to authorize the court, if the basis of a motion to transfer a proceeding under this subchapter or Section 262.203 is that the child resides in another county, to deny the motion if it is shown that the child has resided in that county for less than six months at the time the proceeding is commenced.

SECTION 3. Amends Section 162.006, Family Code, by amending Subsections (b) and (e) and adding Subsection (f), as follows:

(b) Requires DPRS, bureau of vital statistics, licensed child-placing agency, or court retaining a copy of the report to provide a copy of the report that has been edited as required by this section or Section 261.201 to certain persons on request. Deletes text regarding protecting the identity of the birth parents and any other person whose identity is confidential.

(e) Requires the agency, if it ceases to function as a child-placing agency, to transfer all the reports to the bureau of vital statistics, rather than DPRS, or, after giving notice to the bureau of vital statistics, rather than DPRS, to a transferee agency that is assuming responsibility for the preservation of the agency's adoption records. Makes a conforming change.

(f) Provides that to the extent of any conflict between this section and Section 261.201 with respect to the department's duty to edit documents, records, and other information, Section 261.201 prevails.

SECTION 4. Amends Section 261.002(a), Family Code, to require DPRS to establish and maintain in Austin a central registry of reported cases of child abuse, neglect, or exploitation.

SECTION 5. Amends Section 261.004, Family Code, as follows:

Sec. 261.004. STATISTICS OF ABUSE AND NEGLECT OF CHILDREN. (a) Requires DPRS to prepare and disseminate statistics by county relating to DPRS's activities under this subtitle and include the information specified in Subsection (b) in an annual report covering the preceding fiscal year. Requires the report to be made available

to the public.

(b) Requires DPRS to report the certain information, to the extent the information is available from DPRS records:

(c) Requires DPRS to compile the information specified in Subsection (b) for the preceding fiscal year in a report to be submitted to the legislature and the general public not later than March 1, rather than February 1, of each year.

SECTION 6. Amends Section 262.101, Family Code, is amended to read 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 a hearing to be supported by an affidavit sworn to by a person with personal knowledge, including knowledge acquired from DPRS's investigation or other business records. Requires the affidavit to state certain facts sufficient to satisfy a person of ordinary prudence and caution.

SECTION 7. Amends Section 262.107(a), Family Code, to require 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 finds certain sufficient evidence to satisfy a person of ordinary prudence and caution.

SECTION 8. Amends Section 262.112, Family Code, by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f), as follows:

(b) Provides that in any proceeding in which an expedited hearing is held under Subsection (a), DPRS, parent, a guardian, or other party to the proceeding is entitled to an expedited appeal on a ruling by a court that the child may not be removed from the child's home or, if DPRS has already removed the child, a ruling by a court that DPRS must return the child to the child's home.

(c) Provides that if a child is returned to the child's home after a removal in which DPRS was entitled to an expedited hearing under this section and the child is the subject of a subsequent allegation of abuse or neglect, DPRS or any other interested party is entitled to an expedited hearing on the removal of the child from the child's home in the manner provided by Subsection (a) and to an expedited appeal as provided by Subsections (b), (d), and (e).

(d) Requires the party, not later than the first day after the date a trial court makes a ruling from which a party is entitled to an expedited appeal under Subsection (b), to file a notice of expedited appeal with the trial court and the appellate court. Provides that a docket entry reflecting the trial court's ruling is a final, appealable order for purposes of this section, and the trial court's failure to render a signed, written order does not affect a party's right to appeal. Requires the trial record, not later than the third day after the date notice of expedited appeal is filed, to be filed in the appellate court. Requires the appellant, not later than the second day after the date the trial record is filed, to file a brief with the appellate court. Authorizes the appellee to file a response brief. Prohibits failure of the appellant or appellee to file a brief from affecting or delaying the hearing on the appeal. Prohibits the appellate court from granting an extension to any party.

(e) Requires the appellate court, regardless of whether a request for oral argument is granted, to render a final order or judgment on an appeal under Subsection (d) not later than a certain date.

(f) Defines "expedited hearing."

SECTION 9. Amends Section 263.405, Family Code, as added by Chapter 1090, Acts of the 77th Legislature, Regular Session, 2001, as follows:

Sec. 263.405. APPEAL OF FINAL ORDER. (a) Requires the appeal to be set for submission on the first submission date on or after the 31st day after the date the last brief on the appeal is filed.

(b) Requires, rather than authorizes, the statement to be combined with a motion for a new trial or a motion to modify, correct, or reform the judgment, if any. Provides that a motion for a new trial or motion to modify, correct, or reform the judgment is considered to be overruled if the court in which the motion is made does not render a signed order on the motion before the 36th day after the date the trial judge signed the final order.

(c) Provides that a motion for a new trial, a request for findings of fact and conclusions of law, or any other post-trial motion in the trial court does not extend the deadline for filing a notice of appeal under Rule 26.1(b), Texas Rules of Appellate Procedure, or the deadline for filing an affidavit of indigence in accordance with Rule 20, Texas Rules of Appellate Procedure.

(d) Deletes Subsection (d) requiring the trial court to hold certain hearings.

(e) Requires the party, if a party claims indigency and requests the appointment of an attorney, to file an affidavit of indigence in accordance with Rule 20.1, Texas Rules of Appellate Procedure, which governs an appeal of a ruling on the claim of indigency, except that the trial court may not extend the time to conduct a hearing on a contest to the claim of indigency. Deletes certain text requiring the court to require a person to file an affidavit and issues concerning indigency.

(f) Requires the appellate record to be filed in the appellate court not later than the 60th day after the date the final order is signed by the trial judge, unless the trial court grants a new trial or sustains a contest to a ruling on a claim of indigency, rather than denying a request for a trial court record at no cost.

(g) Authorizes the appellant to appeal the court's order denying the appellant's claim of indigency by filing a written request for the reporter's record and the clerk's record, both of which shall be provided without advance payment, not later than the third day after the date the trial court rendered the order and by filing both records with the appellate court not later than the 10th day after the date the trial court rendered the order. Authorizes the clerk's record to include only those items pertaining to the issue of indigency and authorizes the reporter's record to include only a record of the hearings conducted by the trial court on the issue of indigency. Requires the appellate court to review the records and to require the parties to file appellate briefs on the issues presented, but prohibits from hearing oral argument on the issues. Requires the appellate court to render appropriate orders after reviewing the records and appellate briefs, if any.

(h) Prohibits the appellate court, except on a showing of good cause, from extending the time for filing a record or appellate brief.

SECTION 10. Amends Section 264.101(d), Family Code, to authorize the Board of Protective and Regulatory Services to adopt rules that establish criteria and guidelines for the payment of foster care, including medical care, subject to the availability of funds, for a child and for providing care for a child after the child becomes 18 years of age if the child meets certain criteria, including being medically fragile or having complex medical needs.

SECTION 11. Provides that Section 162.006, Family Code, as amended by this Act, applies only to records regarding the history of a child placed for adoption that are provided to a person on or after the effective date of this Act. Makes application of this section prospective.

SECTION 12. Makes application of Section 261.002, Family Code, as amended by this Act,

prospective.

SECTION 13. Makes application of Sections 262.101 and 262.107, Family Code, as amended by this Act, regarding a suit affecting the parent-child relationship requesting an order to take possession of a child, prospective.

SECTION 14. Makes application of Section 262.112, Family Code, as amended by this Act, and Section 263.405, Family Code, as added by Chapter 1090, Acts of the 77th Legislature, Regular Session, 2001, and amended by this Act, prospective.

SECTION 15. Effective date: September 1, 2003.