

BILL ANALYSIS

Senate Research Center

S.B. 1643
By: Uresti
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1643 makes several changes to the Family Code relating to the mandatory dismissal deadlines and extended jurisdiction of the court in foster care cases. These changes are at the request of the Department of Family and Protective Services (DFPS).

Section 201.2041(b), Family Code, is technical clean-up to conform an amendment made to Section 263.401 (Dismissal After One Year; Extension), Family Code, by H.B. 1481, 80th Legislature, Regular Session, 2007, which repealed Section 263.401(d), Family Code, and tied the mandatory dismissal deadline in Child Protective Services (CPS) cases to the date on which the trial on the merits is commenced.

Sections 263.401 and 263.403, Family Code, close a loophole in the mandatory dismissal deadlines in cases in which the final trial on the merits was commenced prior to the mandatory dismissal deadlines for CPS cases, but for which the trial court later orders a new trial after the mandatory dismissal deadlines have passed. No provision was made in either section for this event, and as a result of this loophole, the Supreme Court ruled that a child would have to be returned to a home that the trial court had previously determined was not safe. These amendments close the loophole by providing a reasonable extension for the limited purpose of conducting the retrial.

Subchapter G (Extended Jurisdiction After Child's 18th Birthday) was added to Chapter 263 (Review of Placement of Children Under Care of Department of Regulatory and Protective Services), Family Code, allowing a former foster youth the option of requesting extended jurisdiction of the court if the youth continues to reside in foster care or is receiving transitional living services from DFPS. This bill revises Subchapter G in order to maximize the availability of federal funding under Title IV-E of the Social Security Act for youth who remain in, or return to, extended foster care between their 18th and 21st birthdays.

This bill makes extension of the court's jurisdiction mandatory, rather than optional, for young adults in extended foster care after turning 18 years of age; creates a trial independence period between 6-12 months, during which time a youth may return to foster care without losing Title IV-E eligibility; requires periodic hearings every six months and specifies the matters to be reviewed and the findings to be made by the court, as required for Title IV-E funding; specifies which parties must receive notice as required by Title IV-E; continues the original option in Subchapter G which allows the courts to extend jurisdiction while a young adult is being referred from the Department of Aging and Disability Services for possible guardianship; and allows young adults who are not in extended foster care, but who are receiving transitional living services from DFPS to continue requesting extended jurisdiction of the court at their option.

As proposed, S.B. 1643 amends current law relating to mandatory dismissal deadlines and extended jurisdiction in suits affecting the parent child relationship to which the Department of Family and Protective Services is a party.

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 201.2041(b), Family Code, as follows:

(b) Provides that regardless of whether a de novo hearing is requested before the referring court, for purposes of Section 263.401, the suit is not required to be dismissed if the associate judge commences the trial on the merits prior to the applicable deadline for dismissal. Deletes existing text providing that regardless of whether a de novo hearing is requested before the referring court, a proposed order or judgment rendered by an associate judge that meets the requirements of Section 263.401(d) (relating to text repealed by Acts of the 80th Legislature, Regular Session, 2007), is considered a final order for purposes of Section 263.401.

SECTION 2. Amends Section 263.401, Family Code, by adding Subsection (b-1) and amending Subsection (c), as follows:

(b-1) Authorizes the court, if, after commencement of the initial trial on the merits in the time described by Subsection (a) (relating to requiring the court, under certain conditions, to dismiss the suit) or (b) (relating to prohibiting the court, under certain conditions, from retaining the suit), the court grants a motion for new trial or a mistrial, to retain the suit on the court's docket. Requires the court, if the court retains the suit on the court's docket, to render an order in which the court:

(1) schedules a new date, not later than the 180th day after the date the motion for new trial or mistrial is granted, on which the suit will be dismissed if the new trial has not commenced;

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the trial on the merits to commence on a date not later than the date specified under Subdivision (1).

(c) Requires the court, if the court grants an extension under Subsection (b) or a new trial or mistrial under Subsection (b-1) but does not commence the trial on the merits before the required new date for dismissal, to dismiss the suit. Prohibits the court from granting an additional extension that extends the suit beyond the required date for dismissal under Subsection (b) or (b-1). Makes a nonsubstantive change.

SECTION 3. Amends 263.403, Family Code, by adding Subsections (c-1) and (c-2), as follows:

(c-1) Authorizes the court, if, after commencement of the initial trial on the merits in the times described by Subsections (b) (relating to authorizing the court to retain the suit by temporary order under certain conditions) or (c) (relating to requiring the court to reschedule the dismissal date if the child must be moved from the home by the Department of Family and Protective Services), the court grants a motion for new trial or a mistrial, to retain the suit on the court's docket. Requires the court, if the court retains the suit on the court's docket, to render an order in which the court:

(1) schedules a new date, not later than the 180th day after the date the motion for new trial or mistrial is granted, on which the suit will be dismissed if the new trial has not commenced;

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the trial on the merits to commence on a date not later than the date specified under Subdivision (1).

(c-2) Requires the court, if the court grants an extension under Subsection (b) or (c), or a new trial or mistrial under Subsection (c-1), but does not commence the trial on the merits before the required new date for dismissal, to dismiss the suit. Prohibits the court from granting an additional extension that extends the suit beyond the required date for dismissal under Subsection (b), (c), or (c-1).

SECTION 4. Amends Section 263.601, Family Code, as follows:

Sec. 263.601. DEFINITIONS. Defines, in this subchapter, "trial independence period," and redefines "foster care."

SECTION 5. Amends Section 263.602, Family Code, as follows:

Sec. 263.602. New heading: EXTENDED JURISDICTION AND TRIAL INDEPENDENCE FOR YOUTH IN EXTENDED FOSTER CARE. (a) Provides that a court that had continuing, exclusive jurisdiction over a young adult on the day before the young adult's 18th birthday continues to have extended jurisdiction over the young adult and shall retain the case on the court's docket while the young adult remains in extended foster care and during a trial independence period as described in this section.

(b) Requires a court with extended jurisdiction of a young adult who remains in extended foster care to conduct periodic extended foster care review hearings every six months for the purpose of reviewing and making findings regarding the following:

(1) whether the young adult's living arrangement is safe and appropriate and whether the Department of Family and Protective Services (DFPS) has made reasonable efforts to place the young adult in the least restrictive environment necessary to meet the needs of the young adult;

(2) whether DFPS is making reasonable efforts to finalize the permanency plan that is in effect for the young adult, including a permanency plan for independent living;

(3) for a young adult whose permanency plan is independent living, whether:

(A) the young adult participated in the development of a plan of service;

(B) the young adult's plan of service reflects the independent living skills and appropriate services needed to achieve independence by the projected date; and

(C) the young adult is making reasonable progress in developing the skills needed to achieve independence by the projected date; and

(4) whether additional services that DFPS is authorized to provide under statute or DFPS rules or policy, either directly or through a contracted service provider, or that are available in the community, are needed to meet the needs of the young adult.

(c) Requires DFPS, no less than 10 days prior to a scheduled hearing under this section, to provide the court with a copy of the young adult's plan of service and a court report addressing the issues the court is required to review under Subsection (b).

(d) Requires that notice of an extended foster care review hearing be given as provided by Rule 21a, Texas Rules of Civil Procedure (Methods of Service), to

the following persons, each of whom has a right to present evidence and be heard at the hearing:

- (1) the young adult who is the subject of the suit;
- (2) DFPS;
- (3) the foster parent with whom the young adult is placed and the licensed administrator of a child placing agency responsible for placing the young adult, if applicable;
- (4) the director of the residential child-care facility or other approved provider with whom the young adult is placed, if applicable;
- (5) each parent of the young adult whose parental rights have not been terminated and who still is actively involved in the life of the young adult;
- (6) a legal guardian of the young adult, if applicable; and
- (7) the young adult's attorney ad litem, guardian ad litem, and volunteer advocate, the appointment of whom has not been previously dismissed by the court.

(d) Authorizes the court, if, after reviewing the young adult's plan of service and court report provided under Subsection (c), and any additional testimony and evidence presented at the review hearing, the court determines that the young adult is entitled to additional services under DFPS's rules or policies, or under a contract with a service provider, to order DFPS to take appropriate action to ensure that the young adult receives the additional services to which the young adult is entitled.

(e) Requires a court with extended jurisdiction over a young adult as described in Subsection (a) to continue to have jurisdiction over the young adult and to retain the case on the court's docket until the earlier of six months from the month in which the young adult leaves foster care, or up to twelve months from the month in which the young adult leaves foster care if so specified in a court order, for the purpose of allowing the young adult to pursue a trial independence period, or the young adult's 21st birthday.

(f) Provides that a court with extended jurisdiction as described in this section is not required to conduct periodic hearings for a young adult during a trial independence period and is prohibited from compelling a young adult who has exited foster care to attend a court hearing. Deletes existing text authorizing the court, at the young adult's request, to render an order that extends the court's jurisdiction over the young adult as provided by this subchapter. Deletes existing Subsection (b) providing that the extended jurisdiction of the court terminates on the earlier of the young adult's 21st birthday, or the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court.

SECTION 6. Amends Subchapter G, Chapter 263, Family Code, by adding Section 263.6021, as follows:

Sec. 263.6021. VOLUNTARILY EXTENDED JURISDICTION FOR YOUNG ADULT RECEIVING TRANSITIONAL LIVING SERVICES. (a) Authorizes a court, notwithstanding Section 263.602, that had jurisdiction over a young adult on the day before the young adult's 18th birthday to, at the young adult's request, render an order that extends the court's jurisdiction beyond the end of a trial independence period if the young adult is receiving transitional living services from DFPS.

(b) Provides that the extended jurisdiction of the court under this section terminates on the earlier of the young adult's 21st birthday, or the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court.

(c) Authorizes the court, at the request of a young adult who is receiving transitional living services from DFPS and who consents to voluntary extension of the court's jurisdiction under this section, to hold a hearing to review the services the young adult is receiving.

(d) Requires DFPS, before a review hearing scheduled under this section, to provide the court with a court report summarizing the young adult's transitional living services plan, services being provided to the young adult under that plan, and the young adult's progress in achieving independence.

(e) Authorizes the court, if, after reviewing the court report and any additional testimony and evidence presented at the hearing, the court determines that the young adult is entitled to additional services under DFPS's rules or policies, or under a contract with a service provider, to order DFPS to take appropriate action to ensure that the young adult receives the additional services to which the young adult is entitled.

SECTION 7. Amends Sections 263.603(a) and (c), Family Code, as follows:

(a) Authorizes the court, notwithstanding Section 263.6021, rather than Section 263.602, if the court believes that a young adult may be incapacitated as defined by Section 601(14)(B) (defining "incapacitated person"), Texas Probate Code, to extend its jurisdiction on its own motion without the young adult's consent to allow DFPS to refer the young adult to the Department of Aging and Disability Services (DADS) for guardianship services as required by Section 48.209 (Referral for Guardianship Services), Human Resources Code.

(c) Authorizes the court, if DADS determines a guardianship is not appropriate, or the court with probate jurisdiction denies the application to appoint a guardian, under Subsection (a), to continue to extend its jurisdiction over the young adult only as provided by Section 263.602 or Section 263.6021.

SECTION 8. Repealer: Section 263.609 (Service Review Hearings), Family Code.

SECTION 9. Provides that the changes in law made by this Act to Sections 263.401 and 263.403, Family Code, apply to a suit affecting the parental-child relationship regardless of when filed.

SECTION 10. Effective date: upon passage or September 1, 2011.