

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 2091  
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Health & Human Services  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Department of Family and Protective Services (DFPS) is tasked with protecting Texas children from maltreatment and carries out this mission by removing abused and/or neglected children from their homes. Since FY 2015, removals have increased by almost 21 percent. Research shows that children suffer trauma when they are removed from their homes and placed in foster care, so this should be done only when absolutely necessary. It is imperative that the statutory guidelines DFPS relies on for removing children and terminating parental rights be clear.

S.B. 2091 seeks to clarify standards in the Family Code related to the ability of DFPS to remove children from their families, to compel parents to comply with services, and to terminate parental rights in certain situations. Further, it defines activities that cannot be construed as child neglect, and requires DFPS and the courts to balance the immediate danger to a child's health and safety with the adverse effects to the child's mental or emotional health that may result from the removal of the child from the child's home. Finally, the bill aims to increase permanency for children and prevent them from unnecessarily lingering in the conservatorship of the state. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2091 amends current law relating to the procedures and grounds for terminating the parent-child relationship, for taking possession of a child, and for certain hearings in a suit affecting the parent-child relationship involving 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 Sections 161.001(c) and (e), Family Code, as follows:

(c) Provides that evidence that the parent engaged in one or more of the following activities does not constitute clear and convincing evidence sufficient for a court to make a finding under Subsection (b) (relating to authorizing the court to order termination of the parent-child relationship if certain conditions are met) and order termination of the parent-child relationship, rather than prohibiting a court from making a finding under Subsection (b) and ordering termination of the parent child relationship based on evidence that the parent:

(1)–(3) makes no changes to these subdivisions;

(4)–(5) makes nonsubstantive changes to these subdivisions; or

(6) after taking reasonable precautionary measures, allowed a child, who is of sufficient maturity, physical condition, and mental ability to avoid substantial risk of physical harm, to engage in independent activities, including:

- (A) traveling to and from the child's home and school, including by walking, running, or bicycling;
- (B) traveling to and from the child's home and a commercial or recreational facility near to the child's home;
- (C) engaging in outdoor play;
- (D) remaining at the child's home unattended; or
- (E) engaging in other activities that are generally accepted as suitable for a child's age or level of maturity or that are developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities typical for the age or age group.

SECTION 2. Amends Section 161.101, Family Code, as follows:

- (a) Creates this subsection from existing text and makes no further changes to this subsection.
- (b) Provides that a petition or motion filed by the Department of Family and Protective Services (DFPS) is subject to Chapter 10 (Sanctions For Frivolous Pleadings and Motions), Civil Practice and Remedies Code, and Rule 13 (Effect of Signing, Pleadings, Motions, and Other Papers; Sanctions), Texas Rules of Civil Procedure.

SECTION 3. Amends Section 261.004(4), Family Code, to redefine "neglect."

SECTION 4. Amends Section 262.001, Family Code, by adding Subsections (c) and (d), as follows:

- (c) Requires the court, in determining whether the actions taken by a governmental entity to prevent or eliminate the need to remove a child from the child's home constitute the reasonable efforts required by this chapter (Procedures in Suit by Government Entity to Protect Health and Safety of Child), to consider whether:
  - (1) the actions are consistent with the circumstances;
  - (2) the actions provide for the safety of the child; and
  - (3) the governmental entity weighed the danger to the physical health or safety of the child against the emotional distress that may result from disrupting the parent-child relationship by removing the child from the child's home or parent.
- (d) Prohibits the court, in making a determination under Subsection (c), from considering expert testimony or from authorizing a psychological evaluation of the child or an assessment of the child's mental health.

SECTION 5. Amends Section 262.101, Family Code, 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 and stating facts sufficient to satisfy a person of ordinary prudence and caution that:
- (1)–(3) makes no changes to these subdivisions; and
  - (4) reasonable efforts, rather than reasonable 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.

SECTION 6. Amends Section 262.102(a), Family Code, to make a conforming change.

SECTION 7. Amends Section 262.105(b), Family Code, to make a conforming change.

SECTION 8. Amends Section 262.107(a), Family Code, to make a conforming change.

SECTION 9. Amends Section 262.113, Family Code, to make a conforming change.

SECTION 10. Amends Section 262.116(a), Family Code, as follows:

(a) Prohibits DFPS from taking possession of a child under this subchapter (Taking Possession of Child) based on evidence that the parent:

(1)–(3) makes no changes to these subdivisions;

(4)–(5) makes nonsubstantive changes to these subdivisions; or

(6) after taking reasonable precautionary measures, allowed a child, who is of sufficient maturity, physical condition, and mental ability to avoid substantial risk of physical harm, to engage in independent activities, including:

(A) traveling to and from the child's home and school, including by walking, running, or bicycling;

(B) traveling to and from the child's home and a commercial or recreational facility near to the child's home;

(C) engaging in outdoor play;

(D) remaining at the child's home unattended; or

(E) engaging in other activities that are generally accepted as suitable for a child's age or level of maturity or that are developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities typical for the age or age group.

SECTION 11. Amends Section 262.201, Family Code, by amending Subsections (e-1), (g), (h), (j), and (n) and adding Subsections (g-1), (j-1), and (q), as follows:

(e-1) Provides that a postponement under this subsection is subject to the limits and requirements prescribed by Subsection (e) (relating to authorizing the court to postpone the full adversary hearing for a certain period for good cause shown) and Section 155.207 (Transfer of Court Files).

(g) Makes nonsubstantive changes. Requires the court, in a suit under Section 262.101 (Filing Petition Before Taking Possession of a Child) or 262.105 (Filing Petition After Taking Possession of Child in Emergency), at the conclusion of the full adversary hearing, to order the return of the child to a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession from whom the child is removed unless the court finds that, rather than unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) makes no changes to this subdivision;

(2) makes a conforming change to this subdivision; and

(3) reasonable efforts have been made to enable the child to return home, including efforts weighing the danger to physical health or safety of the child if returned against the emotional distress that may result from disrupting the

parent-child relationship by continued removal of the child from the child's home or parent, but there is substantial risk of a continuing danger if the child is returned home, rather than reasonable efforts have been made to enable the child to return home, but there is a substantial risk of continuing danger if the child is returned home.

(g-1) Requires the court, in a suit filed under Section 262.101 or 262.105, if the court does not order the return of the child under Subsection (g) and finds that another parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession did not cause the immediate danger to the physical health or safety of the child or was not the perpetrator of the neglect or abuse alleged in the suit, to order possession of the child by that person unless the court finds, specific to each person entitled to possession, that:

(1) the person cannot be located after the exercise of due diligence by DFPS or the person is unable or unwilling to take possession of the child; or

(2) reasonable efforts have been made to enable the person's possession of the child, but possession by that person presents a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person, including a danger that the child would be a victim of trafficking under Section 20A.02 (Trafficking of Persons) or 20A.03 (Continuous Trafficking of Persons), Penal Code.

(h) Requires the court, in a suit filed under Section 262.101 or 262.105, if the court finds sufficient evidence to make the applicable finding under Subsection (g) or (g-1), to issue an appropriate temporary order under Chapter 105 (Settings, Hearings, and Orders), rather than in requiring the court, a suit filed under Section 262.101 or 262.105, 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 person's home is contrary to the welfare of the child, to issue an appropriate temporary order under Chapter 105.

(j) Requires the court, in a suit filed under Section 262.113 (Filing Suit Without Taking Possession of Child), at the conclusion on the full adversary hearing, to issue an appropriate temporary order under Chapter 105 if the court finds, with respect to each parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession from whom DFPS is seeking removal, rather than if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution, that:

(1) makes a nonsubstantive change to this subdivision; and

(2) makes a conforming change to this subdivision.

(j-1) Requires the court, in a suit filed under Section 262.113, if the court orders the removal of the child under Subsection (j) and finds that another parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession did not cause the continuing danger to the physical health or safety of the child or was not the perpetrator of neglect or abuse alleged in the suit, to order possession of the child by that person unless the court finds, specific to each person entitled to possession, that:

(1) the person cannot be located after the exercise of due diligence by DFPS or the person is unable or unwilling to take possession of the child; or

(2) reasonable efforts have been made to enable the person's possession of the child, but possession by that person presents a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person, including a danger that the child would be a victim of trafficking under Section 20A.02 or 20A.03, Penal Code.

(n) Requires the court, if the court does not order possession of a child by a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession under Subsection (g), (g-1), (j), or (j-1), to place the child with a relative of the child unless the court finds that the placement with a relative is not in the best interest of the child, rather than requiring the court to place a child removed from the child's custodial parent with the child's noncustodial parent or with a relative of the child if placement with the noncustodial parent is inappropriate, unless placement with the noncustodial parent or a relative is not in the best interest of the child.

(q) Requires DFPS, on receipt of a written request for possession of the child from a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession of the child who was not located before the advisory hearing, to notify the court and request a hearing to determine whether the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian is entitled to possession of the child under Subsection (g-1) or (j-1).

SECTION 12. Amends Sections 263.002, Family Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires the court, at the end of each permanency hearing, to order DFPS to return the child to the child's parent or parents unless the court finds, with respect to each parent, that:

(1) there is a continuing danger to the physical health or safety of the child; and

(2) returning the child to the child's parent or parents is contrary to the welfare of the child.

Deletes existing text requiring the court to make a finding on whether returning the child to the child's home is safe and appropriate, whether the return is in the best interest of the child, and whether it is contrary to the welfare of the child for the child to return home.

(d) Provides that this section (Review of Placements by Court; Findings) does not prohibit the court from rendering an order under Section 263.403 (Monitored Return of Child to Parent).

SECTION 13. Amends Subchapter E, Chapter 263, Family Code, by adding Section 263.4011, as follows:

Section 263.4011. RENDERING FINAL ORDER; EXTENSION. (a) Requires the court, on timely commencement of the trial on the merits under Section 263.401 (Dismissal After One Year; New Trials; Extension), to render a final order not later than the 90th day after the date the trial commences.

(b) Provides that the 90-day period for rendering a final order under Subsection (a) is not tolled for any recess during the trial.

(c) Authorizes the court, if the court finds that extraordinary circumstances necessitate extending the 90-day period under Subsection (a), to grant one extension of that date for not longer than 30 days. Requires the court to render a written order specifying the grounds on which the extension is granted and requiring a final order to be rendered not later than the 30th day after the date the extension is granted.

(d) Authorizes a party to file a mandamus proceeding if the court fails to render a final order within the time required by this section.

SECTION 14. Amends Section 263.403(a-1), Family Code, as follows:

(a-1) Authorizes DFPS or the parent, unless the court has granted an extension under Section 263.401(b), to request the court to retain jurisdiction for an additional six months as necessary for the parent to complete the remaining requirements under a service plan in a transition monitored return under Subsection (a)(2)(B) (relating to authorizing the court to retain jurisdiction and not dismiss the suit or render a final order in certain conditions), rather than the remaining requirements in a service plan and specified in the temporary order that are mandatory for the child's return.

SECTION 15. Amends Section 263.404(a), Family Code, as follows:

(a) Authorizes the court to render a final order appointing DFPS as managing conservator of the child without terminating the rights of the parent of the child if the court finds that:

(1) and (2) makes nonsubstantive changes to these subdivisions; and

(3) if the child has previously been in the conservatorship of DFPS, there is sufficient evidence to demonstrate that termination of parental rights to the child is not possible or not in the child's best interest.

SECTION 16. Amends Section 263.405, Family Code, by adding Subsection (d), as follows:

(d) Requires a party, regardless of whether the party is represented by counsel, to sign the notice of appeal of a final order rendered under this subchapter (Final Order For Child Under Department Care) and provide on the notice the party's mailing address, telephone number, e-mail address, and any fax number.

SECTION 17. Amends Section 264.203, Family Code, as follows:

Section 264.203. **REQUIRED PARTICIPATION.** (a) Authorizes DFPS to file a suit requesting the court to render a temporary order requiring the parent, managing conservator, guardian, or other members of the child's household to, rather than authorizing the court, except as provided by Subsection (d), on request of DFPS to order the parent, managing conservator, guardian, or other member of the child's household to:

(1) participate in the services for which DFPS makes a referral or services DFPS provides or purchases for:

(A) makes no changes to this paragraph; or

(B) reducing a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household, rather than reducing the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future; and

(2) makes no changes to this subdivision.

(b) Authorizes a suit requesting an order under this section to be filed in a court with jurisdiction to hear the suit in the county in which the child is located. Deletes existing text authorizing DFPS to request the court to order the parent, managing conservator, guardian, or other member of the child's household to participate in the services whether the child resides in the home or has been removed from the home.

(c) Provides that, except as otherwise provided by this subchapter, the suit is governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Deletes existing text authorizing the court, if the person ordered to participate in the services fails to follow the court's order, to impose

appropriate sanctions in order to protect the health and safety of the child, including the removal of the child as specified by Chapter 262.

(d) Requires the petition to be supported by an affidavit by a person based on personal knowledge and stating facts sufficient to support a finding that the child has been a victim of abuse or neglect or is at substantial risk of abuse or neglect and that there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household unless that person participates in services requested by DFPS. Requires the court in writing, if the court does not order the person to participate, to specify the reasons for not ordering participation.

(e) Authorizes the court, in a suit filed under this section, to render a temporary restraining order as provided by Section 105.001 (Temporary Orders Before Final Order).

(f) Requires the court to hold a hearing on the petition not later than the 14th day after the date the petition is filed unless the court finds good cause for extending that date for not more than 14 days.

(g) Requires the court to appoint an attorney ad litem to represent the interests of the child immediately after the filing but before the hearing to ensure adequate representation of the child. Requires the attorney ad litem for the child to have the powers and duties of an attorney ad litem for a child under Chapter 107 (Special Appointments, Child Custody Evaluations, and Adoption Evaluations).

(h) Requires the court to appoint an attorney ad litem to represent the interests of a parent for whom participation in services is being requested immediately after the filing but before the hearing to ensure adequate representation of the parent. Requires the attorney ad litem for the parent to have the powers and duties of an attorney ad litem for a parent under Section 107.0131 (Powers and Duties of Attorney Ad Litem For Parent).

(i) Requires the court, before commencement of the hearing, to inform each parent of certain information.

(j) Requires the court, if a parent claims indigence, to require the parent to complete and file with the court an affidavit of indigence. Authorizes the court to consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. Authorizes the attorney ad litem appointed to represent the interests of the parent, if the court determines the parent is indigent, to continue the representation. Requires the court, if the court determines the parent is not indigent, to discharge the attorney ad litem from the appointment after the hearing and to order the parent to pay the cost of the attorney ad litem's representation.

(k) Authorizes the court, for good cause shown, to postpone any subsequent proceedings for not more than seven days after the date of the attorney ad litem's discharge to allow the parent to hire an attorney or to provide the parent's attorney time to prepare for the subsequent proceeding.

(l) Prohibits an order from being rendered under this section except after notice and hearing.

(m) Requires the court, at the conclusion of the hearing, to deny the petition unless the court finds by a preponderance of evidence that abuse or neglect has occurred or there is a continuing danger to the physical health or safety of the

child caused by an act or failure to act of the person entitled to possession and that services to the family are necessary to ensure the safety of the child.

(n) Requires the court, if the court finds sufficient evidence under Subsection (m), to:

(1) state its findings of fact in the order;

(2) make appropriate temporary orders under Chapter 105 necessary to ensure the safety of the child; and

(3) order the participation in specific services narrowly tailored to address the findings made by the court under Subsection (m).

(o) Requires the court, not later than the 90th day after the date the court renders an order under this section, to hold a status hearing to review the status of each party and the child and the services provided, purchased, or referred for the family. Requires the court to set subsequent review hearings every 90 days to review the continued need for the order.

(p) Provides that an order rendered under this section expires on the 180th day after the date the order is signed unless it is renewed as provided by Subsection (q).

(q) Authorizes the court to renew an order rendered under this section on a showing by DFPS of a continuing need for the order, after notice and hearing. Authorizes the order to be renewed only one time for not longer than 180 days.

(r) Authorizes a party affected by the order, at any time, to request the court to terminate the order. Requires the court to terminate the order on a finding that there is no longer need for the order.

SECTION 18. Repealer: Section 262.201(a-5) (relating to authorizing postponement to allow a parent in an adversary hearing to hire an attorney), Family Code.

SECTION 19. Makes application of this Act prospective.

SECTION 20. Provides that, to the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 21. Effective date: October 1, 2019.