

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 190  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 190 seeks to remedy various due process deficiencies in the Child Protective Services system and clarify standards in the Texas Family Code concerning the removal of children and termination of parental rights. The bill redefines neglect, imposes a deadline on rendering final orders, and makes termination cases subject to Chapter 10 of the Civil Practice and Remedies Code and Rule 13 of the Texas Rules of Civil Procedure.

As proposed, S.B. 190 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 Section 161.001(c), Family Code, to provide that certain evidence does not constitute clear and convincing evidence sufficient for a court to make a finding under Subsection (b) (relating to criteria for court-ordered termination of the parent-child relationship) and order termination of the parent-child relationship, including evidence that the parent allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture. Makes conforming and nonsubstantive changes.

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

Sec. 161.101. New heading: PETITION ALLEGATIONS; PETITION AND MOTION REQUIREMENTS. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that a petition or motion filed by the Department of Family and Protective Services (DFPS) in a suit for termination of the parent-child relationship is subject to Chapter 10 (Sanctions for Frivolous Pleadings and Motions), Civil Practice and Remedies Code, and Rule 13, Texas Rules of Civil Procedure.

SECTION 3. Amends Section 261.001(4), Family Code, as follows:

(4) Redefines "neglect," for purposes of Chapter 261 (Investigation of Report of Child Abuse or Neglect) as an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger, rather than a substantial risk, to the child's physical health or safety. Excludes from the criteria for neglect allowing the child to engage in independent activities that are

appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 262.116(a), Family Code, to prohibit DFPS from taking possession of a child under Subchapter B (Taking Possession of Child) based on certain evidence, including evidence that the parent allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.

SECTION 5. Amends Section 262.201, Family Code, by amending Subsections (g), (h), (j), and (n) and adding Subsections (g-1), (j-1), and (q), as follows:

(g) Requires the court, 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), 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, rather than the custodian entitled to possession, unless the court finds certain sufficient evidence.

(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 to issue an appropriate temporary order under Chapter 105 (Settings, Hearings, and Orders) 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), rather than 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.

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

(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 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 or 20A.03, Penal Code.

(n) Requires the court, if it 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. Deletes existing text 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. Makes nonsubstantive changes.

(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 adversary hearing, to notify the court and request a hearing to determine whether that person is entitled to possession of the child under Subsection (g-1) or (j-1).

SECTION 6. Amends Section 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 before the final order, to order DFPS to return the child to the child's parent or parents unless the court finds, with respect to each parent, that there is a continuing danger to the physical health or safety of the child, and that returning the child to the child's parent or parents is contrary to the welfare of the child. Deletes existing text specifying that the court must make a finding on whether returning the child to the child's home is safe and appropriate, and whether the return is in the best interest of the child.

(d) Provides that Section 263.002 (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 7. Amends Subchapter E, Chapter 263, Family Code, by adding Section 263.4011, as follows:

Sec. 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 it 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 8. 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) (relating to criteria under which a court may retain a suit affecting the parent-child relationship), to request the court to retain jurisdiction for an additional six months as necessary for a parent to complete the remaining requirements under a service plan in a transition monitored return under Subsection (a)(2)(B) (relating to a temporary court order for DFPS to transition the child from substitute care to the parent while the parent completes remaining specified requirements), rather than the requirements in a service plan and specified in the temporary order that are mandatory for the child's return.

SECTION 9. Amends Section 264.203, Family Code, as follows:

Sec. 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 member of the child's household, rather than authorizing the court on request of DFPS, except as provided by Subsection (d), to order the parent, managing conservator, guardian, or other member of the subject child's household, to:

(1) participate in certain services, including services for which DFPS makes a referral for:

(A) makes no changes to this paragraph;

(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; or

(C) reducing a substantial risk of abuse or neglect caused by an act or failure to act of the parent, managing conservator, guardian, or member of the child's household; 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.

(c) Provides that, except as otherwise provided by Subchapter C (Child and Family Services), the suit is governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit.

(d) Requires that the petition be supported by a sworn affidavit by a person based on personal knowledge and stating facts sufficient to support a finding that:

(1) the child has been a victim of abuse or neglect or is at substantial risk of abuse or neglect; and

(2) 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.

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. 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 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child). Deletes existing text requiring 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 the parent's right to be represented by an attorney, and, for a parent who is indigent and appears in opposition to the motion, the parent's right to a court-appointed attorney.

(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 certain additional evidence to determine whether the parent is indigent. 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) Authorizes an order to be rendered under this section only 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 substantial risk of abuse or neglect or 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; and that services are necessary to ensure the physical health or safety of the child.

(n) Requires the court, if it renders an order granting the petition, to state its findings in the order; make appropriate temporary orders under Chapter 105 necessary to ensure the safety of the child; and order the participation in specific services narrowly tailored to address the findings made by the court under Subsection (m).

(o) Prohibits the court, if it finds that a parent, managing conservator, guardian, or other member of the child's household did not cause the continuing danger to the physical health or safety of the child or the substantial risk of abuse or neglect, or was not the

perpetrator of the abuse or neglect alleged, from requiring that person to participate in services ordered under Subsection (n).

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

(q) Provides that an order rendered under this section expires on the 180th day after the date the order is signed unless the court extends the order as provided by Subsection (r) or (s).

(r) Authorizes the court to extend an order rendered under this section on a showing by DFPS of a continuing need for the order, after notice and hearing. Authorizes the court, except as provided by Subsection (s), to extend the order only one time for not more than 180 days.

(s) Authorizes the court to extend an order rendered under this section for not more than an additional 180 days only if:

(1) the court finds that the extension is necessary to allow the person required to participate in services under the plan of service time to complete those services, DFPS made a good faith effort to timely provide the services to the person, the person made a good faith effort to complete the services, and the completion of the services is necessary to ensure the physical health and safety of the child; and

(2) the extension is requested by the person or the person's attorney.

(t) Authorizes a person affected by the order to request the court to terminate the order at any time. Requires the court to terminate the order on finding the order is no longer needed.

SECTION 10. Provides that Section 161.101, Family Code, as amended by this Act, applies only to a petition or motion filed by DFPS on or after the effective date of this Act. Provides that a petition or motion filed by DFPS before that date is governed by the law in effect on the date the petition or motion was filed, and the former law is continued in effect for that purpose.

SECTION 11. Provides that the changes in law made by this Act apply only to a suit filed by DFPS on or after the effective date of this Act. Provides that a suit filed by DFPS before that date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 12. Effective date: September 1, 2021.