

1-1 By: West S.B. No. 999
1-2 (In the Senate - Filed February 21, 2017; March 6, 2017,
1-3 read first time and referred to Committee on Health & Human
1-4 Services; April 24, 2017, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 April 24, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Schwertner	X		
1-10	Uresti	X		
1-11	Buckingham	X		
1-12	Burton	X		
1-13	Kolkhorst	X		
1-14	Miles	X		
1-15	Perry	X		
1-16	Taylor of Collin	X		
1-17	Watson	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 999 By: Uresti

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to procedures for taking possession of a child and for
1-22 certain hearings in a suit affecting the parent-child relationship
1-23 involving the Department of Family and Protective Services.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 262.101, Family Code, is amended to read
1-26 as follows:

1-27 Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF
1-28 CHILD. An original suit filed by a governmental entity that
1-29 requests permission to take possession of a child without prior
1-30 notice and a hearing must be supported by an affidavit sworn to by a
1-31 person with personal knowledge and stating facts sufficient to
1-32 satisfy a person of ordinary prudence and caution that:

1-33 (1) there is an immediate danger to the physical
1-34 health or safety of the child or the child has been a victim of
1-35 neglect or sexual abuse;

1-36 (2) ~~[and that]~~ continuation in the home would be
1-37 contrary to the child's welfare;

1-38 (3) ~~[(2)]~~ there is no time, consistent with the
1-39 physical health or safety of the child, for a full adversary hearing
1-40 under Subchapter C; and

1-41 (4) ~~[(3)]~~ reasonable efforts, consistent with the
1-42 circumstances and providing for the safety of the child, were made
1-43 to prevent or eliminate the need for the removal of the child.

1-44 SECTION 2. Section 262.1015(d), Family Code, is amended to
1-45 read as follows:

1-46 (d) A temporary restraining order under this section
1-47 expires not later than the 14th day after the date the order was
1-48 rendered, unless the court grants an extension under Section
1-49 262.201(e) ~~[262.201(a-3)]~~.

1-50 SECTION 3. Section 262.102(a), Family Code, is amended to
1-51 read as follows:

1-52 (a) Before a court may, without prior notice and a hearing,
1-53 issue a temporary order for the conservatorship of a child under
1-54 Section 105.001(a)(1) or a temporary restraining order or
1-55 attachment of a child authorizing a governmental entity to take
1-56 possession of a child in a suit brought by a governmental entity,
1-57 the court must find that:

1-58 (1) there is an immediate danger to the physical
1-59 health or safety of the child or the child has been a victim of
1-60 neglect or sexual abuse;

2-1 (2) ~~[and that]~~ continuation in the home would be
2-2 contrary to the child's welfare;

2-3 (3) ~~[(2)]~~ there is no time, consistent with the
2-4 physical health or safety of the child and the nature of the
2-5 emergency, for a full adversary hearing under Subchapter C; and

2-6 (4) ~~[(3)]~~ reasonable efforts, consistent with the
2-7 circumstances and providing for the safety of the child, were made
2-8 to prevent or eliminate the need for removal of the child.

2-9 SECTION 4. Section 262.103, Family Code, is amended to read
2-10 as follows:

2-11 Sec. 262.103. DURATION OF TEMPORARY ORDER, TEMPORARY
2-12 RESTRAINING ORDER, AND ATTACHMENT. A temporary order, temporary
2-13 restraining order, or attachment of the child issued under Section
2-14 262.102(a) expires not later than 14 days after the date it is
2-15 issued unless it is extended as provided by the Texas Rules of Civil
2-16 Procedure or Section 262.201(e) ~~[262.201(a-3)]~~.

2-17 SECTION 5. Section 262.105, Family Code, is amended to read
2-18 as follows:

2-19 Sec. 262.105. FILING PETITION AFTER TAKING POSSESSION OF
2-20 CHILD IN EMERGENCY. (a) When a child is taken into possession
2-21 without a court order, the person taking the child into possession,
2-22 without unnecessary delay, shall:

2-23 (1) file a suit affecting the parent-child
2-24 relationship; and

2-25 (2) ~~[request the court to appoint an attorney ad litem
2-26 for the child; and~~

2-27 ~~[(3)]~~ request an initial hearing to be held by no later
2-28 than the first business ~~[working]~~ day after the date the child is
2-29 taken into possession.

2-30 (b) An original suit filed by a governmental entity after
2-31 taking possession of a child under Section 262.104 must be
2-32 supported by an affidavit stating facts sufficient to satisfy a
2-33 person of ordinary prudence and caution that:

2-34 (1) based on the affiant's personal knowledge or on
2-35 information furnished by another person corroborated by the
2-36 affiant's personal knowledge, one of the following circumstances
2-37 existed at the time the child was taken into possession:

2-38 (A) there was an immediate danger to the physical
2-39 health or safety of the child;

2-40 (B) the child was the victim of sexual abuse or of
2-41 trafficking under Section 20A.02 or 20A.03, Penal Code;

2-42 (C) the parent or person who had possession of
2-43 the child was using a controlled substance as defined by Chapter
2-44 481, Health and Safety Code, and the use constituted an immediate
2-45 danger to the physical health or safety of the child; or

2-46 (D) the parent or person who had possession of
2-47 the child permitted the child to remain on premises used for the
2-48 manufacture of methamphetamine; and

2-49 (2) based on the affiant's personal knowledge:

2-50 (A) continuation of the child in the home would
2-51 have been contrary to the child's welfare;

2-52 (B) there was no time, consistent with the
2-53 physical health or safety of the child, for a full adversary hearing
2-54 under Subchapter C; and

2-55 (C) reasonable efforts, consistent with the
2-56 circumstances and providing for the safety of the child, were made
2-57 to prevent or eliminate the need for the removal of the child.

2-58 SECTION 6. Sections 262.106(a) and (d), Family Code, are
2-59 amended to read as follows:

2-60 (a) The court in which a suit has been filed after a child
2-61 has been taken into possession without a court order by a
2-62 governmental entity shall hold an initial hearing on or before the
2-63 first business ~~[working]~~ day after the date the child is taken into
2-64 possession. The court shall render orders that are necessary to
2-65 protect the physical health and safety of the child. If the court
2-66 is unavailable for a hearing on the first business ~~[working]~~ day,
2-67 then, and only in that event, the hearing shall be held no later
2-68 than the first business ~~[working]~~ day after the court becomes
2-69 available, provided that the hearing is held no later than the third

3-1 business [~~working~~] day after the child is taken into possession.

3-2 (d) For the purpose of determining under Subsection (a) the
3-3 first business [~~working~~] day after the date the child is taken into
3-4 possession, the child is considered to have been taken into
3-5 possession by the Department of Family and Protective Services on
3-6 the expiration of the five-day period permitted under Section
3-7 262.007(c) or 262.110(b), as appropriate.

3-8 SECTION 7. Section 262.107(a), Family Code, is amended to
3-9 read as follows:

3-10 (a) The court shall order the return of the child at the
3-11 initial hearing regarding a child taken in possession without a
3-12 court order by a governmental entity unless the court is satisfied
3-13 that:

3-14 (1) the evidence shows that one of the following
3-15 circumstances exists:

3-16 (A) there is a continuing danger to the physical
3-17 health or safety of the child if the child is returned to the
3-18 parent, managing conservator, possessory conservator, guardian,
3-19 caretaker, or custodian who is presently entitled to possession of
3-20 the child;

3-21 (B) [~~or the evidence shows that~~] the child has
3-22 been the victim of sexual abuse or of trafficking under Section
3-23 20A.02 or 20A.03, Penal Code, on one or more occasions and that
3-24 there is a substantial risk that the child will be the victim of
3-25 sexual abuse or of trafficking in the future;

3-26 (C) the parent or person who has possession of
3-27 the child is currently using a controlled substance as defined by
3-28 Chapter 481, Health and Safety Code, and the use constitutes an
3-29 immediate danger to the physical health or safety of the child; or

3-30 (D) the parent or person who has possession of
3-31 the child has permitted the child to remain on premises used for the
3-32 manufacture of methamphetamine;

3-33 (2) continuation of the child in the home would be
3-34 contrary to the child's welfare; and

3-35 (3) reasonable efforts, consistent with the
3-36 circumstances and providing for the safety of the child, were made
3-37 to prevent or eliminate the need for removal of the child.

3-38 SECTION 8. Section 262.109(b), Family Code, is amended to
3-39 read as follows:

3-40 (b) The written notice must be given as soon as practicable,
3-41 but in any event not later than the first business [~~working~~] day
3-42 after the date the child is taken into possession.

3-43 SECTION 9. Subchapter B, Chapter 262, Family Code, is
3-44 amended by adding Section 262.1131 to read as follows:

3-45 Sec. 262.1131. TEMPORARY RESTRAINING ORDER BEFORE FULL
3-46 ADVERSARY HEARING. In a suit filed under Section 262.113, the court
3-47 may render a temporary restraining order as provided by Section
3-48 105.001.

3-49 SECTION 10. Section 262.201, Family Code, is amended to
3-50 read as follows:

3-51 Sec. 262.201. FULL ADVERSARY HEARING; FINDINGS OF THE
3-52 COURT. (a) In a suit filed under Section 262.101 or 262.105,
3-53 unless [~~Unless~~] the child has already been returned to the parent,
3-54 managing conservator, possessory conservator, guardian, caretaker,
3-55 or custodian entitled to possession and the temporary order, if
3-56 any, has been dissolved, a full adversary hearing shall be held not
3-57 later than the 14th day after the date the child was taken into
3-58 possession by the governmental entity, unless the court grants an
3-59 extension under Subsection (e) [~~(a-3)~~].

3-60 (b) A full adversary hearing in a suit filed under Section
3-61 262.113 requesting possession of a child shall be held not later
3-62 than the 30th day after the date the suit is filed.

3-63 (c) [~~(a-1)~~] Before commencement of the full adversary
3-64 hearing, the court must inform each parent not represented by an
3-65 attorney of:

3-66 (1) the right to be represented by an attorney; and

3-67 (2) if a parent is indigent and appears in opposition
3-68 to the suit, the right to a court-appointed attorney.

3-69 (d) [~~(a-2)~~] If a parent claims indigence and requests the

4-1 appointment of an attorney before the full adversary hearing, the
 4-2 court shall require the parent to complete and file with the court
 4-3 an affidavit of indigence. The court may consider additional
 4-4 evidence to determine whether the parent is indigent, including
 4-5 evidence relating to the parent's income, source of income, assets,
 4-6 property ownership, benefits paid in accordance with a federal,
 4-7 state, or local public assistance program, outstanding
 4-8 obligations, and necessary expenses and the number and ages of the
 4-9 parent's dependents. If the appointment of an attorney for the
 4-10 parent is requested, the court shall make a determination of
 4-11 indigence before commencement of the full adversary hearing. If
 4-12 the court determines the parent is indigent, the court shall
 4-13 appoint an attorney to represent the parent.

4-14 (e) [~~(a-3)~~] The court may, for good cause shown, postpone
 4-15 the full adversary hearing for not more than seven days from the
 4-16 date of the attorney's appointment to provide the attorney time to
 4-17 respond to the petition and prepare for the hearing. The court may
 4-18 shorten or lengthen the extension granted under this subsection if
 4-19 the parent and the appointed attorney agree in writing. If the
 4-20 court postpones the full adversary hearing, the court shall extend
 4-21 a temporary order, temporary restraining order, or attachment
 4-22 issued by the court under Section 262.102(a) or Section 262.1131
 4-23 for the protection of the child until the date of the rescheduled
 4-24 full adversary hearing.

4-25 (f) [~~(a-4)~~] The court shall ask all parties present at the
 4-26 full adversary hearing whether the child or the child's family has a
 4-27 Native American heritage and identify any Native American tribe
 4-28 with which the child may be associated.

4-29 (g) In a suit filed under Section 262.101 or 262.105, at
 4-30 [~~(b) At~~] the conclusion of the full adversary hearing, the court
 4-31 shall order the return of the child to the parent, managing
 4-32 conservator, possessory conservator, guardian, caretaker, or
 4-33 custodian entitled to possession unless the court finds sufficient
 4-34 evidence to satisfy a person of ordinary prudence and caution that:

4-35 (1) there was a danger to the physical health or safety
 4-36 of the child, including a danger that the child would be a victim of
 4-37 trafficking under Section 20A.02 or 20A.03, Penal Code, which was
 4-38 caused by an act or failure to act of the person entitled to
 4-39 possession and for the child to remain in the home is contrary to
 4-40 the welfare of the child;

4-41 (2) the urgent need for protection required the
 4-42 immediate removal of the child and reasonable efforts, consistent
 4-43 with the circumstances and providing for the safety of the child,
 4-44 were made to eliminate or prevent the child's removal; and

4-45 (3) reasonable efforts have been made to enable the
 4-46 child to return home, but there is a substantial risk of a
 4-47 continuing danger if the child is returned home.

4-48 (h) In a suit filed under Section 262.101 or 262.105, if
 4-49 [~~(c) If~~] the court finds sufficient evidence to satisfy a person
 4-50 of ordinary prudence and caution that there is a continuing danger
 4-51 to the physical health or safety of the child and for the child to
 4-52 remain in the home is contrary to the welfare of the child, the
 4-53 court shall issue an appropriate temporary order under Chapter 105.

4-54 (i) In determining whether there is a continuing danger to
 4-55 the physical health or safety of the child under Subsection (g), the
 4-56 court may consider whether the household to which the child would be
 4-57 returned includes a person who:

4-58 (1) has abused or neglected another child in a manner
 4-59 that caused serious injury to or the death of the other child; or

4-60 (2) has sexually abused another child.

4-61 (j) In a suit filed under Section 262.113, at the conclusion
 4-62 of the full adversary hearing, the court shall issue an appropriate
 4-63 temporary order under Chapter 105 if the court finds sufficient
 4-64 evidence to satisfy a person of ordinary prudence and caution that:

4-65 (1) there is a continuing danger to the physical
 4-66 health or safety of the child caused by an act or failure to act of
 4-67 the person entitled to possession of the child and continuation of
 4-68 the child in the home would be contrary to the child's welfare; and

4-69 (2) reasonable efforts, consistent with the

5-1 circumstances and providing for the safety of the child, were made
 5-2 to prevent or eliminate the need for the removal of the child.

5-3 (k) If the court finds that the child requires protection
 5-4 from family violence, as that term is defined by Section 71.004, by
 5-5 a member of the child's family or household, the court shall render
 5-6 a protective order for the child under Title 4.

5-7 (l) The court shall require each parent, alleged father, or
 5-8 relative of the child before the court to complete the proposed
 5-9 child placement resources form provided under Section 261.307 and
 5-10 file the form with the court, if the form has not been previously
 5-11 filed with the court, and provide the Department of Family and
 5-12 Protective Services with information necessary to locate any other
 5-13 absent parent, alleged father, or relative of the child. The court
 5-14 shall inform each parent, alleged father, or relative of the child
 5-15 before the court that the person's failure to submit the proposed
 5-16 child placement resources form will not delay any court proceedings
 5-17 relating to the child.

5-18 (m) The court shall inform each parent in open court that
 5-19 parental and custodial rights and duties may be subject to
 5-20 restriction or to termination unless the parent or parents are
 5-21 willing and able to provide the child with a safe environment. [~~If~~
 5-22 ~~the court finds that the child requires protection from family~~
 5-23 ~~violence by a member of the child's family or household, the court~~
 5-24 ~~shall render a protective order under Title 4 for the child. In~~
 5-25 ~~this subsection, "family violence" has the meaning assigned by~~
 5-26 ~~Section 71.004.~~

5-27 [~~(d) In determining whether there is a continuing danger to~~
 5-28 ~~the physical health or safety of the child, the court may consider~~
 5-29 ~~whether the household to which the child would be returned includes~~
 5-30 ~~a person who:~~

5-31 ~~(1) has abused or neglected another child in a manner~~
 5-32 ~~that caused serious injury to or the death of the other child; or~~

5-33 ~~(2) has sexually abused another child.]~~

5-34 (n) [~~(e)]~~ The court shall place a child removed from the
 5-35 child's custodial parent with the child's noncustodial parent
 5-36 unless the court finds that:

5-37 (1) there is a danger to the physical health or safety
 5-38 of the child caused by an act or failure to act of the child's
 5-39 noncustodial parent and placement of the child with the child's
 5-40 noncustodial parent would be contrary to the child's welfare;

5-41 (2) reasonable efforts, consistent with the
 5-42 circumstances and providing for the safety of the child, were made
 5-43 to place the child with the child's noncustodial parent; and

5-44 (3) it is not in the best interest of the child to be
 5-45 placed with the child's noncustodial parent.

5-46 (o) If [~~or with a relative of the child if]~~ placement with
 5-47 the noncustodial parent is inappropriate, the court shall place a
 5-48 child removed from the child's custodial parent with a relative of
 5-49 the child unless placement with [~~the noncustodial parent or]~~ a
 5-50 relative is not in the best interest of the child.

5-51 (p) [~~(f)]~~ When citation by publication is needed for a
 5-52 parent or alleged or probable father in an action brought under this
 5-53 chapter because the location of the parent, alleged father, or
 5-54 probable father is unknown, the court may render a temporary order
 5-55 without delay at any time after the filing of the action without
 5-56 regard to whether notice of the citation by publication has been
 5-57 published.

5-58 (q) [~~(g)]~~ For the purpose of determining under Subsection
 5-59 (a) the 14th day after the date the child is taken into possession,
 5-60 a child is considered to have been taken into possession by the
 5-61 Department of Family and Protective Services on the expiration of
 5-62 the five-day period permitted under Section 262.007(c) or
 5-63 262.110(b), as appropriate.

5-64 SECTION 11. Section 262.205, Family Code, is repealed.

5-65 SECTION 12. The changes in law made by this Act apply only
 5-66 to a suit affecting the parent-child relationship that is filed on
 5-67 or after the effective date of this Act. A suit filed before the
 5-68 effective date of this Act is governed by the law in effect on the
 5-69 date the suit is filed, and the former law is continued in effect

6-1 for that purpose.

6-2 SECTION 13. This Act takes effect September 1, 2017.

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