A joint project of the
State Bar of Texas Family Law Section
and Texas Family Law Foundation

Annotated Texas Family Code

2019

ANNOTATED
TEXAS FAMILY CODE

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PREFACE

This edition of the *Annotated Texas Family Code* is a joint project of the Family Law Section of the State Bar of Texas and the Texas Family Law Foundation. The Family Law Section and the Family Law Foundation are committed to bringing quality publications to Texas family law practitioners. The contributors to this annotated Code represent some of the finest family law practitioners in Texas; many of them have served on the section's Legislative Committee. They have brought their considerable experience to bear on drafting useful and insightful annotations to the Code. In addition to the annotations, a list of additional resources includes over one hundred CLE articles of interest to practitioners, and full copies of all TexasBarCLE articles referenced are included in the digital version of the publication.

It took the voluntary contribution of thousands of hours of work to bring this edition to publication. It began with an oversight committee led by Charlie Hodges that consisted of Sherri Evans, Diana S. Friedman, Judge Jack Marr, Steve Naylor, Chris Nickelson, Judge Dean Rucker, and Brian Webb.

Chris Nickelson headed up the drafting task force that wrote the majority of the annotations. The committee included Aimee Pingenot Key, Charles E. Hardy, Cindy V. Tisdale, Richard T. Sutherland, Ellen A. Yarrell, Hon. Emily Miskel, Eric Robertson, Frederick S. Adams, Jr., Jonathan J. Bates, Jessica Hall Janicek, Larry L. Martin, Latrelle Bright Joy, Ann W. Jamieson, Derek T. Bragg, Kathleen Brown, Kelly Caperton Fischer, Lawrence M. Doss, Sarah Arvidsson, T. Hunter Lewis, Jim Mueller, and Kristal C. Thomson. Jimmy L.Verner, Jr., acted as editor in chief.

Eric Robertson headed up the committee to update annotations to the Code after the 2015 legislative session. This committee included Jimmy Vaught, Leigh de la Reza, Jimmy L. Verne, Jr., Sallee S. Smyth, Ellen A. Yarrell, Kathleen Witkovski, Charles E. Hardy, Ann W. Jamieson, Larry L. Martin, George Shake, JoAl Cannon Sheridan, Kelly Caperton Fischer, Jonathan J. Bates, Lauren E. Melhart, and Karl E. Hays.

Eric Robertson again headed up the committee to update annotations to the Code after the 2017 legislative session. This committee included Jimmy Vaught, Lisa L. Stewart, Sallee S. Smyth, Kristiana Butler, Amanda Andrae, Kathleen Coble, Charles E. Hardy, Ann W. Jamieson, Larry L. Martin, JoAl Cannon Sheridan, Kelly Caperton Fischer, Lauren E. Melhart, and Karl E. Hays.

Sallee S. Smyth took over as committee chair for the 2018 edition. This committee included Angelica Rolong Cormier, Kelly Caperton Fischer, Heather Hughes, Taylor Imel, Joe Indelicato, Sarah Hirsch Joyce, Lauren E. Melhart, Aaron M. Reimer, Leigh de la Reza, Jimmy Vaught, and Jimmy L. Verner, Jr.

Sallee S. Smyth again led the committee for this 2019 edition. This committee included Angelica Rolong Cormier, Kelly Caperton Fischer, Heather Hughes, Taylor Imel, Joe Indelicato, Sarah Hirsch Joyce, Lauren E. Melhart, Leigh de la Reza, Grady Reiff, Jimmy Vaught, and Tasha McInnis Wilson.

The Family Law Section of the State Bar of Texas

The Family Law Section of the State Bar of Texas is the third largest section with over 6,300 members as of 2019. The section produces quality publications to benefit its members, including the *Family Lawyer's Essential Toolkit*, *Family Law Checklists*, *Predicates Manual*, and the *Texas Family Law Practice Manual*. The section also produces innovative and successful CLE programs in association with TexasBarCLE such as the Marriage Dissolution Course and the Advanced Family Law Course. The section's Legislative Committee prepares a package of proposed legislation for each legislative session. Finally, the Pro Bono Committee of the section works to advance the goal of providing indigent Texans access to attorneys for their family law cases.

The Texas Family Law Foundation

The Texas Family Law Foundation is an entity separate from the Family Law Section; its mission is to improve the practice of family law in Texas. Volunteers participate in research and legislative work. The voluntary organization includes lawyers, judges, associate judges, legal assistants, court coordinators, and other professionals. The Foundation provides expert professional support for the Family Law Section's approved activities. In addition, the Foundation provides information on the activities of the Texas Legislature and how changes in the law may affect family law practitioners.

Editor's Note

This edition of the Texas Family Code has been tailored to fit the needs of Texas family law practitioners. To this end this edition focuses on the portions of the Code of primary interest and usefulness in family law cases, and Titles 3 and 3A have been omitted. Select provisions of the Texas Constitution have been added to the book.

TITLE 1. THE MARRIAGE RELATIONSHIP

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SUBCHAPTER A. DEFINITIONS

Sec. 1.001. APPLICABILITY OF DEFINITIONS

(a) The definitions in this subchapter apply to this title.

(b) Except as provided by this subchapter, the definitions in Chapter 101 apply to terms used in this title.

(c) If, in another part of this title, a term defined by this subchapter has a meaning different from the meaning provided by this subchapter, the meaning of that other provision prevails.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 1.002. COURT

"Court" means the district court, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this title.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 1.003. SUIT FOR DISSOLUTION OF MARRIAGE

"Suit for dissolution of a marriage" includes a suit for divorce or annulment or to declare a marriage void.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER B. PUBLIC POLICY

Sec. 1.101. EVERY MARRIAGE PRESUMED VALID

In order to promote the public health and welfare and to provide the necessary records, this code specifies detailed rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering in to the marriage relationship in good faith and to provide for an orderly determination of parentage and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless a strong reason exists for holding the marriage void or voidable. Therefore, every marriage entered into in this state is presumed to be valid unless expressly made void by Chapter 6 or unless expressly made voidable by Chapter 6 and annulled as provided by that chapter.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

De Leon v. Perry, 975 F. Supp. 2d 632 (W.D. Tex. 2014), *aff'd*, 791 F.3d 619 (5th Cir. 2015). Under Texas law, the general rule is that a marriage valid where contracted is valid everywhere and that one void where contracted is void everywhere. The validity of the marriage is generally determined by the law of the place where it is celebrated.

Estate of Claveria v. Claveria, 615 S.W.2d 164 (Tex. 1981). Once a common-law marriage exists, it, like any other marriage, may be terminated only by death or court decree. The spouses' subsequent denials of a common-law marriage do not undo the marriage.

Adeleye v. Driscal, 544 S.W.3d 467 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Trial court found that the parties had a valid marriage for a customary Nigerian marriage by proxy. On appeal, husband argued they were engaged and that he was still married to another person but was unable to overcome presumption that the more recent marriage was valid.

Zewde v. Abadi, 529 S.W.3d 189 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Evidence of divorce decree issued in foreign country, inter alia, was sufficient to support finding that prior marriage was validly dissolved.

Fuentes v. Zaragoza, 555 S.W.3d 141 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). Wife filed a petition for divorce in the United States; both she and husband were Mexican citizens married in the United States. Husband claimed he divorced wife in Mexico fifty-five years prior to her petition for divorce and had subsequently married someone else even though he continued to live with wife for fifty years following the alleged divorce. Court held marriage valid and declined to recognize the Mexican divorce as a foreign judgment obtained without due process.

Kingery v. Hintz, 124 S.W.3d 875 (Tex. App.—Houston [14th Dist.] 2004, no pet.). Texas' policy of supporting the validity of marriage applies to lawful marriages. Tex. Fam. Code § 2.401(c)(1) prohibits a person under the age of eighteen from entering into informal marriage even with parental consent.

Durr v. Newman, 537 S.W.2d 323 (Tex. Civ. App.—El Paso 1976, writ ref'd n.r.e.). The validity of a marriage is determined by the law of the place where it was contracted or celebrated.

Black v. Shell Oil Co., 397 S.W.2d 877 (Tex. Civ. App.—Texarkana 1965, writ ref'd n.r.e.). When a marriage license and certificate are placed into evidence, all reasonable presumptions will be in favor of the validity of the marriage.

Watson v. Todd, 322 S.W.2d 422 (Tex. Civ. App.—Fort Worth 1959, no writ). The presumption in favor of the validity of a marriage that has been shown to have been contracted is one of the strongest known to law. The strength of the presumption increases with lapse of time. The presumption, itself, is evidence and may outweigh positive evidence to the contrary.

Sec. 1.102. MOST RECENT MARRIAGE PRESUMED VALID

When two or more marriages of a person to different spouses are alleged, the most recent marriage is presumed to be valid as against each marriage that precedes the most recent marriage until one who asserts the validity of a prior marriage proves the validity of the prior marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

To rebut the presumption of validity, a party must prove that a marriage is either void or voidable as provided by Texas Family Code chapter 6, Suit for Dissolution of Marriage. Typically, the ground alleged for rebutting the presumption of a valid marriage is that the petitioner is currently married to another person and that the earlier marriage has not been dissolved.

ANNOTATIONS

Estate of Claveria v. Claveria, 615 S.W.2d 164 (Tex. 1981). The presumption that the most recent marriage is a valid one continues until the impediment of a prior marriage and its continuing validity is proven.

Davis v. Davis, 521 S.W.2d 603 (Tex. 1975). To rebut the presumption that the most recent marriage is valid, it is not necessary to prove the nonexistence of divorce in every jurisdiction where proceedings could have been possible. It is necessary only to rule out those proceedings where one might reasonably have been expected to have pursued them.

Adeleye v. Driscal, 544 S.W.3d 467 (Tex. App.—Houston [14th Dist.] 2018, no pet.). When two or more marriages of a person to different spouses are alleged, courts presume that the most recent marriage is valid against each marriage that precedes it, until one who asserts the validity of a previous marriage proves its validity.

Zewde v. Abadi, 529 S.W.3d 189 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Evidence of divorce decree issued in foreign country, inter alia, was sufficient to support finding that prior marriage was validly dissolved.

Nguyen v. Nguyen, 355 S.W.3d 82 (Tex. App.—Houston [1st Dist.] 2011, pet. denied). The strength of the presumption that the most recent marriage is valid increases with the lapse of time, acknowledgments by the parties to the mar-

riage, and the birth of children. When the validity of the most recent marriage is challenged on the basis of a prior marriage, the burden of proof is on the party challenging the most recent marriage to prove the validity of the prior marriage and its continuing validity.

Bailey–Mason v. Mason, 122 S.W.3d 894 (Tex. App.—Dallas 2003, pet. denied). Although a docket entry indicated "divorce granted," no judgment was presented or signed. Therefore, an undissolved first marriage rendered subsequent marriages void.

Snyder v. Schill, 388 S.W.2d 208 (Tex. Civ. App.—Houston 1964, writ ref'd n.r.e.). When a person has remarried, a presumption arises that the previous marriage had been dissolved by the time of the subsequent marriage. The person attacking the validity of the subsequent marriage has the burden of overcoming this presumption by proving that the previous marriage had not been dissolved by annulment, divorce, or death of the previous spouse.

Sec. 1.103. PERSONS MARRIED ELSEWHERE

The law of this state applies to persons married elsewhere who are domiciled in this state.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This statute is considered an explicit directive as to "choice of law," as recognized by Chief Justice Jefferson in his concurrence in *Citizens Insurance Co. v. Daccach*, 217 S.W.3d 430, 464 (Tex. 2007). In the absence of such an explicit statutory directive, Restatement (Second) of Conflict of Laws section 6 sets forth the applicable factors in determining choice of law. *See Seth v. Seth*, 694 S.W.2d 459, 462 (Tex. App.—Fort Worth 1985, no writ) (pre–Family Code case applying section 6).

ANNOTATIONS

De Leon v. Perry, 975 F. Supp. 2d 632 (W.D. Tex. 2014), *aff'd*, 791 F.3d 619 (5th Cir. 2015). Under Texas law, the general rule is that a marriage valid where contracted is valid everywhere and that one void where contracted is void everywhere. The validity of the marriage is generally determined by the law of the place where it is celebrated.

Fuentes v. Zaragoza, 555 S.W.3d 141 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). Texas law presumes that every marriage is valid, including marriages performed outside the state.

Durr v. Newman, 537 S.W.2d 323 (Tex. Civ. App.—El Paso 1976, writ ref'd n.r.e.). The validity of a marriage is determined by the law of the place where it was contracted or celebrated.

Sec. 1.104. CAPACITY OF SPOUSE

Except as expressly provided by statute or by the constitution, a person, regardless of age, who has been married in accordance with the law of this state has the capacity and power of an adult, including the capacity to contract.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

A person who is or has been married under Texas law is no longer a child. A married child does not lose his or her adult status if the marriage ends in divorce. However, an annulment of a child's marriage does restore minority status because an annulment voids the marriage from its inception. A minor cannot enter into a common law marriage.

ANNOTATIONS

Kingery v. Hintz, 124 S.W.3d 875 (Tex. App.—Houston [14th Dist.] 2003, no pet.). A person who is or has been married in accordance with Texas law is no longer a child. Here, Tex. Fam. Code § 2.401(c) barred a fifteen-year-old female entering into a valid common-law marriage. Therefore, she did not become emancipated.

Husband v. Pierce, 800 S.W.2d 661 (Tex. App.—Tyler 1990, orig. proceeding). A minor who has been married in accordance with Texas law has the power and capacity of an adult. A parent's rights and duties, including the duty of support, end once a child has been emancipated by marriage.

Fernandez v. Fernandez, 717 S.W.2d 781 (Tex. App.—El Paso 1986, writ dism'd). When a minor's marriage ends in an annulment, the minor's disabilities of minority are reinstated.

Sec. 1.105. JOINDER IN CIVIL SUITS

(a) A spouse may sue and be sued without the joinder of the other spouse.

(b) When claims or liabilities are joint and several, the spouses may be joined under the rules relating to joinder of parties generally.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Neither spouse may virtually represent the other in a lawsuit. If one of the spouses consents to have the other to represent him or her, Tex. Fam. Code § 3.102(c) permits that arrangement, provided the consenting spouse authorizes that representation by a power of attorney or other agreement in writing.

ANNOTATIONS

Bounds v. Caudle, 560 S.W.2d 925 (Tex. 1978). The right of spouses to sue and be sued, together with the expanded rights of each spouse to manage his or her separate and sole–management community property, provided the basis for the abrogation of the interspousal tort immunity doctrine.

Cooper v. Texas Gulf Industries, Inc., 513 S.W.2d 200 (Tex. 1974). The rights of the wife, like the rights of a husband and the rights of any other joint owner, may be affected only by a suit in which the wife is called to answer. An unsuccessful suit concerning jointly managed community property brought solely by the husband is not res judicata as to the wife.

Few v. Charter Oak Fire Insurance Co., 463 S.W.2d 424 (Tex. 1971). A wife has the right to sue without the joinder of her husband.

Klein & Associates v. Klein, 637 S.W.2d 507 (Tex. App.—Eastland 1982, no writ). A trial court erred when it dismissed, for want of jurisdiction, a physician's suit for services rendered when the physician sued a widow without joining her deceased husband's estate because either spouse can be sued without joinder of the other.

Sec. 1.106. CRIMINAL CONVERSATION NOT AUTHORIZED

A right of action by one spouse against a third party for criminal conversation is not authorized in this state.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Criminal conversation is, essentially, adultery in the form of a tort. Historically, a spouse had the right to sue a third party who engaged in sexual relations with the other spouse for damages even when there was no further loss, such as alienation of the other spouse's affections. *See Felsenthal v. McMillan*, 493 S.W.2d 729 (Tex. 1973) (alienation of affections part of common law). However, in 1975, the legislature specifically abolished criminal conversation as a cause of action. Acts 1975, 64th Leg., R.S., ch. 637.

ANNOTATIONS

Smith v. Smith, 126 S.W.3d 660 (Tex. App.—Houston [14th Dist.] 2004, no pet.). The court upheld the constitutionality of Tex. Fam. Code § 1.106, holding that this section does not violate the Texas Constitution's open courts provision, Tex. Const. art. I, § 13.

Truitt v. Carnley, 836 S.W.2d 786 (Tex. App.—Fort Worth 1992, writ denied). A wife brought a claim for infliction of emotional anguish against a woman who allegedly engaged in an adulterous affair with her husband. The court held that such an action was based upon criminal conversation or alienation of affections, both of which have been abolished.

Sec. 1.107. ALIENATION OF AFFECTION NOT AUTHORIZED

A right of action by one spouse against a third party for alienation of affection is not authorized in this state.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

The Texas Supreme Court recognized the right to recover for alienation of affections in *Kelsey–Seybold Clinic v. Maclay*, 466 S.W.2d 716 (Tex. 1971), but that cause of action has since been abolished by the legislature. Acts 1975, 64th Leg., R.S., ch. 637.

ANNOTATIONS

Helena Laboratories Corp. v. Snyder, 886 S.W.2d 767 (Tex. 1994) (per curiam). No independent cause of action exists for negligent interference with the familial relationship.

Smith v. Smith, 126 S.W.3d 660 (Tex. App.—Houston [14th Dist.] 2004, no pet.). The court upheld the constitutionality of Tex. Fam. Code § 1.107, holding that this section does not violate the Texas Constitution's open courts provision, Tex. Const. art. I, § 13.

Stites v. Gillum, 872 S.W.2d 786 (Tex. App.—Fort Worth 1994, writ denied). A trial court did not abuse its discretion when it awarded sanctions against a wife's attorney who filed a counterpetition in a divorce suit against a third party for interference with the familial relationship of the husband and wife because the Family Code specifically prohibits alienation of affections suits.

Truitt v. Carnley, 836 S.W.2d 786 (Tex. App.—Fort Worth 1992, writ denied). A wife brought a claim for infliction of emotional anguish against a woman who allegedly engaged in an adulterous affair with her husband. The court held that such an action was based upon criminal conversation or alienation of affections, both of which have been abolished.

RESOURCES

Jeana L. Lungwitz & Leslie M. Stewart, *Personal Injury Lawsuits in Intimate Relationships*, U.T. Fam. L. Front Lines (2008).

Shelby Moore, *They Are Not Damaged Goods: Protecting Children from the Psychological and Emotional Consequences of Exposure to Domestic Abuse*, Adv. Fam. L. (2010).

John F. Nichols, Jr., *Other Causes of Action*, Adv. Fam. L. (2011).

Sec. 1.108. PROMISE OR AGREEMENT MUST BE IN WRITING

A promise or agreement made on consideration of marriage or nonmarital conjugal cohabitation is not enforceable unless the promise or agreement or a memorandum of the promise or agreement is in writing and signed by the person obligated by the promise or agreement.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Tex. Bus. & Com. Code § 26.01(a), (b)(3) also requires an agreement made on consideration of marriage or on consideration of nonmarital cohabitation to be in writing. These sections are often applied to nonmarital cohabitation agreements and conditional gifts of engagement rings.

ANNOTATIONS

Curtis v. Anderson, 106 S.W.3d 251 (Tex. App.—Austin 2003, pet. denied). An agreement that an engagement ring be returned if no marriage take places must be in writing to be enforceable. If there is no writing, then return of an engagement ring is subject to the fault-based conditional gift rule, which requires that the ring be returned to the donor if the donee is at fault in terminating the engagement.

Zaremba v. Cliburn, 949 S.W.2d 822 (Tex. App.—Fort Worth 1997, writ denied). In this "palimony" suit, the court declared that pleading ancillary items of consideration, such as the performance of household services, does not take an agreement outside the statute of frauds and render it enforceable. The agreement still must be in writing.

Sec. 1.109. USE OF DIGITIZED SIGNATURE

(a) A digitized signature on an original petition under this title or any other pleading or order in a proceeding under this title satisfies the requirements for and imposes the duties of signatories to pleadings, motions, and other papers identified under Rule 13, Texas Rules of Civil Procedure.

(b) A digitized signature under this section may be applied only by, and must remain under the sole control of, the person whose signature is represented.

Added by Acts 2015, 84th Leg., R.S., Ch. 1165 (S.B. 813), Sec. 1, eff. September 1, 2015.

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SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

Sec. 2.001. MARRIAGE LICENSE

(a) A man and a woman desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county of this state.

(b) A license may not be issued for the marriage of persons of the same sex.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

The United States Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), represents a substantial change in the law regarding same-sex marriage, holding that same-sex couples may exercise their fundamental right to marry in all states. The federal district court in *De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015), found that article 1, section 32 of the Texas Constitution and Texas Family Code section 6.204 are unconstitutional, and the State of Texas is enjoined from enforcing them. *De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015).

Section 2.001 was recognized as unconstitutional by *Ranolls v. Dewling*, 223 F. Supp. 3d 613 (2016).

ANNOTATIONS

Obergefell v. Hodges, 135 S. Ct. 2584 (2015). There is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character.

De Leon v. Abbott, 791 F.3d 619 (5th Cir. 2015). There is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character.

Pidgeon v. Turner, 538 S.W.3d 73 (Tex. 2017). When a court declares a law unconstitutional, the law remains in place until the body that enacted it repeals it, even though the government may no longer constitutionally enforce it.

Williams v. White, 263 S.W.2d 666 (Tex. Civ. App.—Austin 1953, writ ref'd n.r.e.) (per curiam). The statutes regulating the mode of entering into the marriage relation, including the consent of the parents, and provisions requiring that a license be obtained before performance of the marriage ceremony, are merely directory. Even if a marriage is entered into otherwise than in accordance with the provisions of such statutes, it is nevertheless a valid marriage unless the statute declares that its violation shall render the marriage void.

Sec. 2.002. APPLICATION FOR LICENSE

Except as provided by Section 2.006, each person applying for a license must:

(1) appear before the county clerk;

(2) submit the person's proof of identity and age as provided by Section 2.005(b);

(3) provide the information applicable to that person for which spaces are provided in the application for a marriage license;

(4) mark the appropriate boxes provided in the application; and

(5) take the oath printed on the application and sign the application before the county clerk.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2009, 81st Leg., R.S., Ch. 978 (H.B. 3666), Sec. 1, eff. September 1, 2009.

Sec. 2.003. APPLICATION FOR LICENSE BY MINOR

(a) A person under 18 years of age may not marry unless the person has been granted by this state or another state a court order removing the disabilities of minority of the person for general purposes.

(b) In addition to the other requirements provided by this chapter, a person under 18 years of age applying for a license must provide to the county clerk:

(1) a court order granted by this state under Chapter 31 removing the disabilities of minority of the person for general purposes; or

(2) if the person is a nonresident minor, a certified copy of an order removing the disabilities of minority of the person for general purposes filed with this state under Section 31.007.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2017, 85th Leg., R.S., Ch. 934 (S.B. 1705), Sec. 1, eff. Sept. 1, 2017.

COMMENTS

The minimum age to marry without judicial consent is eighteen years old. Individuals who are sixteen or seventeen years of age must have judicial approval to marry. In 2017 the Texas legislature removed the ability of parents to consent to the marriage of children under the age of eighteen. Judicial approval is required for anyone under the age of eighteen to marry.

ANNOTATIONS

Williams v. White, 263 S.W.2d 666 (Tex. Civ. App.—Austin 1953, writ ref'd n.r.e.) (per curiam). The marriage of a female under the age of eighteen could not be annulled at the suit of her parents. The marriage is not void, but merely voidable at suit of the female and not her relatives, not even her parents, unless with consent of the female.

Sec. 2.004. APPLICATION FORM

(a) The county clerk shall furnish the application form as prescribed by the bureau of vital statistics.

(b) The application form must contain:

(1) a heading entitled "Application for Marriage License, _____ County, Texas";

(2) spaces for each applicant's full name, including the woman's maiden surname, address, social security number, if any, date of birth, and place of birth, including city, county, and state;

(3) a space for indicating the document tendered by each applicant as proof of identity and age;

(4) spaces for indicating whether each applicant has been divorced within the last 30 days;

(5) printed boxes for each applicant to check "true" or "false" in response to the following statement: "I am not presently married and the other applicant is not presently married.";

(6) printed boxes for each applicant to check "true" or "false" in response to the following statement: "The other applicant is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption;

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild or stepparent; or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.";

(7) printed boxes for each applicant to check "true" or "false" in response to the following statement: "I am not presently delinquent in the payment of court-ordered child support.";

(8) a printed oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS CORRECT.";

(9) spaces immediately below the printed oath for the applicants' signatures;

(10) a certificate of the county clerk that:

(A) each applicant made the oath and the date and place that it was made; or

(B) an applicant did not appear personally but the prerequisites for the license have been fulfilled as provided by this chapter;

(11) spaces for indicating the date of the marriage and the county in which the marriage is performed;

(12) a space for the address to which the applicants desire the completed license to be mailed; and

(13) a printed box for each applicant to check indicating that the applicant wishes to make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(c) An applicant commits an offense if the applicant knowingly provides false information under Subsection (b)(1), (2), (3), or (4). An offense under this subsection is a Class C misdemeanor.

(d) An applicant commits an offense if the applicant knowingly provides false information under Subsection (b)(5) or (6). An offense under this subsection is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., ch. 776, Sec. 1, eff. Sept. 1, 1997; Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.05, eff. September 1, 2005; Acts 2013, 83rd Leg., R.S., Ch. 820 (S.B. 1836), Sec. 1, eff. June 14, 2013.

Sec. 2.005. PROOF OF IDENTITY AND AGE

(a) The county clerk shall require proof of the identity and age of each applicant.

(b) The proof must be established by:

(1) a driver's license or identification card issued by this state, another state, or a Canadian province that is current or has expired not more than two years preceding the date the identification is submitted to the county clerk in connection with an application for a license;

(2) a United States passport;

(3) a current passport issued by a foreign country or a consular document issued by a state or national government;

(4) an unexpired Certificate of United States Citizenship, Certificate of Naturalization, United States Citizen Identification Card, Permanent Resident Card, Temporary Resident

Card, Employment Authorization Card, or other document issued by the federal Department of Homeland Security or the United States Department of State including an identification photograph;

(5) an unexpired military identification card for active duty, reserve, or retired personnel with an identification photograph;

(6) an original or certified copy of a birth certificate issued by a bureau of vital statistics for a state or a foreign government;

(7) an original or certified copy of a Consular Report of Birth Abroad or Certificate of Birth Abroad issued by the United States Department of State;

(8) an original or certified copy of a court order relating to the applicant's name change or sex change;

(9) school records from a secondary school or institution of higher education;

(10) an insurance policy continuously valid for the two years preceding the date of the application for a license;

(11) a motor vehicle certificate of title;

(12) military records, including documentation of release or discharge from active duty or a draft record;

(13) an unexpired military dependent identification card;

(14) an original or certified copy of the applicant's marriage license or divorce decree;

(15) a voter registration certificate;

(16) a pilot's license issued by the Federal Aviation Administration or another authorized agency of the United States;

(17) a license to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(18) a temporary driving permit or a temporary identification card issued by the Department of Public Safety; or

(19) an offender identification card issued by the Texas Department of Criminal Justice.

(c) A person commits an offense if the person knowingly provides false, fraudulent, or otherwise inaccurate proof of an applicant's identity or age under this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.06, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 978 (H.B. 3666), Sec. 2, eff. September 1, 2009. Acts 2015, 84th Leg, R.S., Ch. 437 (H.B. 910), Sec. 10, eff. January 1, 2016.

ANNOTATIONS

In re Estate of Araguz, 443 S.W.3d 233, 245 (Tex. App.—Corpus Christi 2014, pet. denied). Texas law recognizes that an individual who has had a "sex change" is eligible to marry a person of the opposite sex.

Williams v. White, 263 S.W.2d 666 (Tex. Civ. App.—Austin 1953, writ ref'd n.r.e.) (per curiam). Failure to comply with the formalities involved in obtaining a marriage license does not render the marriage invalid unless a statute declares the marriage invalid.

Sec. 2.006. ABSENT APPLICANT

(a) If an applicant who is 18 years of age or older is unable to appear personally before the county clerk to apply for a marriage license, any adult person or the other applicant may apply on behalf of the absent applicant.

(b) The person applying on behalf of an absent applicant shall provide to the clerk:

(1) notwithstanding Section 132.001, Civil Practice and Remedies Code, the notarized affidavit of the absent applicant as provided by this subchapter; and

(2) proof of the identity and age of the absent applicant under Section 2.005(b).

(c) Notwithstanding Subsection (a), the clerk may not issue a marriage license for which both applicants are absent unless the person applying on behalf of each absent applicant provides to the clerk an affidavit of the applicant declaring that the applicant is a member of the armed forces of the United States stationed in another country in support of combat or another military operation.

Added by Acts 1997, 75th Leg., Ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2005, 79th Leg., Ch. 947 (H.B. 858), Sec. 1, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 978 (H.B. 3666), Sec. 3, eff. September 1, 2009. Acts 2013, 83rd Leg., R.S., Ch. 650 (H.B. 869), Sec. 1, eff. September 1, 2013. Acts 2017, 85th Leg., R.S., Ch. 934 (S.B. 1705), Sec. 2, eff. Sept. 1, 2017.

COMMENTS

The plain language of this section allows two absent applicants to apply for a marriage license, provided that each of them has an adult person apply for the license on his or her behalf and those persons submit the affidavits required by Tex. Fam. Code § 2.007.

PRACTICE TIPS

In 2011, the Texas legislature amended Tex. Civ. Prac. & Rem. Code § 132.001 to allow unsworn declarations, or in other words, declarations absent the presence of a notary public, unless otherwise required by law. However, subsection 2.006(b)(1) requires that the affidavit of an absent applicant for a marriage license be notarized.

RESOURCES

Joseph W. McKnight, *Annual Survey of Texas Law: Family Law: Husband and Wife*, 58 SMU L. Rev. 877 (2005).

Sec. 2.007. AFFIDAVIT OF ABSENT APPLICANT

The affidavit of an absent applicant must include:

(1) the absent applicant's full name, including the maiden surname of a female applicant, address, date of birth, place of birth, including city, county, and state, citizenship, and social security number, if any;

(2) a declaration that the absent applicant has not been divorced within the last 30 days;

(3) a declaration that the absent applicant is:

(A) not presently married; or

(B) married to the other applicant and they wish to marry again;

(4) a declaration that the other applicant is not presently married and is not related to the absent applicant as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption;

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild or stepparent; or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption;

(5) a declaration that the absent applicant desires to marry and the name, age, and address of the person to whom the absent applicant desires to be married;

(6) the approximate date on which the marriage is to occur;

(7) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(8) the appointment of any adult, other than the other applicant, to act as proxy for the purpose of participating in the ceremony, if the absent applicant is:

(A) a member of the armed forces of the United States stationed in another country in support of combat or another military operation; and

(B) unable to attend the ceremony.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.07, eff. September 1, 2005. Acts 2013, 83rd Leg., R.S., Ch. 650 (H.B. 869), Sec. 2, eff. September 1, 2013.

PRACTICE TIPS

In 2011, the Texas legislature amended Tex. Civ. Prac. & Rem. Code § 132.001 to allow unsworn declarations, or in other words, declarations absent the presence of a notary public, unless otherwise required by law. However, subsection 2.006(b)(1) requires that the affidavit of an absent applicant for a marriage license be notarized.

Sec. 2.0071. MAINTENANCE OF RECORDS BY CLERK RELATING TO LICENSE FOR ABSENT APPLICANT

A county clerk who issues a marriage license for an absent applicant shall maintain the affidavit of the absent applicant and the application for the marriage license in the same manner that the clerk maintains an application for a marriage license submitted by two applicants in person.

Added by Acts 2013, 83rd Leg., R.S., Ch. 650 (H.B. 869), Sec. 3, eff. September 1, 2013.

Sec. 2.008. EXECUTION OF APPLICATION BY CLERK

(a) The county clerk shall:

(1) determine that all necessary information, other than the date of the marriage ceremony, the county in which the ceremony is conducted, and the name of the preson who performs the ceremony, is recorded on the application and that all necessary documents are submitted;

(2) administer the oath to each applicant appearing before the clerk;

(3) have each applicant appearing before the clerk sign the application in the clerk's presence; and

(4) execute the clerk's certificate on the application.

(b) A person appearing before the clerk on behalf of an absent applicant is not required to take the oath on behalf of the absent applicant.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Tex. Att'y. Gen. Op. No. KP-0025 (2015). County clerks and their employees retain religious freedoms that may provide accommodation of their religious objections to issuing same-sex marriage licenses. Importantly, the strength of any particular religious accommodation claim depends on the particular facts of each case.

Sec. 2.009. ISSUANCE OF LICENSE

(a) Except as provided by Subsections (b) and (d), the county clerk may not issue a license if either applicant:

(1) fails to provide the information required by this subchapter;

(2) fails to submit proof of age and identity;

(3) is under 18 years of age and has not presented:

(A) a court order granted by this state under Chapter 31 removing the disabilities of minority of the applicant for general purposes; or

(B) if the applicant is a nonresident minor, a certified copy of an order removing the disabilities of minority of the applicant for general purposes filed with this state under Section 31.007;

(4) checks "false" in response to a statement in the application, except as provided by Subsection (b) or (d), or fails to make a required declaration in an affidavit required of an absent applicant; or

(5) indicates that the applicant has been divorced within the last 30 days, unless:

(A) the applicants were divorced from each other; or

(B) the prohibition against remarriage is waived as provided by Section 6.802.

(b) If an applicant checks "false" in response to the statement "I am not presently married and the other applicant is not presently married," the county clerk shall inquire as to whether the applicant is presently married to the other applicant. If the applicant states that the applicant is currently married to the other applicant, the county clerk shall record that statement on the license before the administration of the oath. The county clerk may not refuse to issue a license on the ground that the applicants are already married to each other.

(c) On the proper execution of the application, the clerk shall:

(1) prepare the license;

(2) enter on the license the names of the licensees, the date that the license is issued, and, if applicable, the name of the person appointed to act as proxy for an absent applicant, if any;

(3) record the time at which the license was issued;

(4) distribute to each applicant written notice of the online location of the information prepared under Section 2.010 regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) and note on the license that the distribution was made; and

(5) inform each applicant:

(A) that a premarital education handbook developed by the child support division of the office of the attorney general under Section 2.014 is available on the child support division's Internet website; or

(B) if the applicant does not have Internet access, how the applicant may obtain a paper copy of the handbook described by Paragraph (A).

(d) The county clerk may not refuse to issue a license to an applicant on the ground that the applicant checked "false" in response to the statement "I am not presently delinquent in the payment of court-ordered child support."

(e) A license issued by a county clerk under this section:

(1) must identify the county in which the license is issued; and

(2) may include the name of the county clerk.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., ch. 776, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.01(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 185, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.08, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 978 (H.B. 3666), Sec. 4, eff. September 1, 2009. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 1, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 890 (H.B. 984), Sec. 1, eff. September 1, 2013. Acts 2017, 85th Leg., R.S., Ch. 934 (S.B. 1705), Sec. 3, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 695 (H.B. 555), Sec. 1, eff. June 12, 2017.

COMMENTS

The seventy-two-hour waiting period required by Tex. Fam. Code § 2.204 begins "immediately following" the issuance of the marriage license.

Sec. 2.010. AIDS INFORMATION; POSTING ON INTERNET

The Department of State Health Services shall prepare and make available to the public on its Internet website information about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). The information must be designed to inform an applicant for a marriage license about:

(1) the incidence and mode of transmission of AIDS and HIV;

(2) the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and

(3) available and appropriate counseling services regarding AIDS and HIV infection.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 890 (H.B. 984), Sec. 2, eff. September 1, 2013.

Sec. 2.012. VIOLATION BY COUNTY CLERK; PENALTY

A county clerk or deputy county clerk who violates or fails to comply with this subchapter commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $200 and not more than $500.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Section 2.012 was recognized as unconstitutional by *Ranolls v. Dewling*, 223 F. Supp. 3d 613 (2016).

Sec. 2.013. PREMARITAL EDUCATION COURSES

(a) Each person applying for a marriage license is encouraged to attend a premarital education course of at least eight hours during the year preceding the date of the application for the license.

(b) A premarital education course must include instruction in:

(1) conflict management;

(2) communication skills; and

(3) the key components of a successful marriage.

(c) A course under this section should be offered by instructors trained in a skills-based and research-based marriage preparation curricula. The following individuals and organizations may provide courses:

(1) marriage educators;

(2) clergy or their designees;

(3) licensed mental health professionals;

(4) faith-based organizations; and

(5) community-based organizations.

(d) The curricula of a premarital education course must meet the requirements of this section and provide the skills-based and research-based curricula of:

(1) the United States Department of Health and Human Services healthy marriage initiative;

(2) the National Healthy Marriage Resource Center;

(3) criteria developed by the Health and Human Services Commission; or

(4) other similar resources.

(e) The Health and Human Services Commission shall maintain an Internet website on which individuals and organizations described by Subsection (c) may electronically register with the commission to indicate the skills-based and research-based curriculum in which the registrant is trained.

(f) A person who provides a premarital education course shall provide a signed and dated completion certificate to each individual who completes the course. The certificate must include the name of the course, the name of the course provider, and the completion date.

Added by Acts 1999, 76th Leg., ch. 185, Sec. 2, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 327 (H.B. 2685), Sec. 1, eff. September 1, 2008.

Sec. 2.014. FAMILY TRUST FUND

(a) The family trust fund is created as a trust fund with the state comptroller and shall be administered by the attorney general for the beneficiaries of the fund.

(b) Money in the trust fund is derived from depositing $3 of each marriage license fee as authorized under Section 118.018(c), Local Government Code, and may be used only for:

(1) the development of a premarital education handbook;

(2) grants to institutions of higher education having academic departments that are capable of research on marriage and divorce that will assist in determining programs, courses, and policies to help strengthen families and assist children whose parents are divorcing;

(3) support for counties to create or administer free or low-cost premarital education courses;

(4) programs intended to reduce the amount of delinquent child support; and

(5) other programs the attorney general determines will assist families in this state.

(c) The premarital education handbook under Subsection (b)(1) must:

(1) as provided by Section 2.009(c)(5), be made available to each applicant for a marriage license in an electronic form on the Internet website of the child support division of the office of the attorney general or, for an applicant who does not have Internet access, in paper copy form; and

(2) contain information on:

(A) conflict management;

(B) communication skills;

(C) children and parenting responsibilities; and

(D) financial responsibilities.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 553 (S.B. 526), Sec. 6(b), and Ch. 755 (S.B. 1731), Sec. 15(b), eff. September 1, 2017.

Added by Acts 1999, 76th Leg., ch. 185, Sec. 2, eff. Sept. 1, 1999. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 2, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 890 (H.B. 984), Sec. 3, eff. September 1, 2013. Acts 2017, 85th Leg., R.S., Ch. 553 (S.B. 526), Sec. 6(b), eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 15(b), eff. Sept. 1, 2017.

SUBCHAPTER B. UNDERAGE APPLICANTS

Sec. 2.101. GENERAL AGE REQUIREMENT

A county clerk may not issue a marriage license if either applicant is under 18 years of age, unless each underage applicant shows that the applicant has been granted by this state or another state a court order removing the disabilities of minority of the applicant for general purposes.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2017, 85th Leg., R.S., Ch. 934 (S.B. 1705), Sec. 4, eff. Sept. 1, 2017.

COMMENTS

The minimum age to marry without judicial consent is eighteen years old. Individuals who are sixteen or seventeen years of age must have judicial approval to marry. In 2017 the Texas legislature amended the Texas Family Code to require judicial approval for anyone under the age of eighteen to marry.

SUBCHAPTER C. CEREMONY AND RETURN OF LICENSE

Sec. 2.201. EXPIRATION OF LICENSE

If a marriage ceremony has not been conducted before the 90th day after the date the license is issued, the marriage license expires.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 1350 (S.B. 1317), Sec. 1, eff. September 1, 2013.

COMMENTS

Unless the applicant meets one of the four statutory exceptions outlined in Tex. Fam. Code § 2.204, the marriage ceremony should be conducted at least seventy-two hours after the marriage license is issued, but not more than ninety days after the marriage license is issued because the marriage license will then expire.

Sec. 2.202. PERSONS AUTHORIZED TO CONDUCT CEREMONY

(a) The following persons are authorized to conduct a marriage ceremony:

(1) a licensed or ordained Christian minister or priest;

(2) a Jewish rabbi;

(3) a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony;

(4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county courts at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, judge of a municipal court, retired judge of a municipal court, associate judge of a statutory probate court, retired associate judge of a statutory probate court, associate judge of a county court at law, retired associate judge of a county court at law, or judge or magistrate of a federal court of this state; and

(5) a retired judge or magistrate of a federal court of this state.

(b) For the purposes of Subsection (a)(4), a retired judge or justice is a former judge or justice who is vested in the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two or who has an aggregate of at least 12 years of service as judge or justice of any type listed in Subsection (a)(4).

(b–1) For the purposes of Subsection (a)(5), a retired judge or magistrate is a former judge or magistrate of a federal court of this state who is fully vested in the Federal Employees Retirement System under 28 U.S.C. Section 371 or 377.

(c) Except as provided by Subsection (d), a person commits an offense if the person knowingly conducts a marriage ceremony without authorization under this section. An offense under this subsection is a Class A misdemeanor.

(d) A person commits an offense if the person knowingly conducts a marriage ceremony of a minor whose marriage is prohibited by law or of a person who by marrying commits an offense under Section 25.01, Penal Code. An offense under this subsection is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.10, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 134 (S.B. 935), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1350 (S.B. 1317), Sec. 2, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1069 (H.B. 2278), Sec. 1, eff. September 1, 2015.

COMMENTS

The Texas attorney general issued an opinion that this section does not authorize a retired federal judge to conduct a marriage ceremony in Texas because retired federal judges are not among the retired judges listed in this section. Tex. Att'y. Gen. Op. No. GA–0948 (2012). But in 2013, subsection 2.002(a) was amended to add retired federal judges and magistrates to the list of judges who may perform marriages.

ANNOTATIONS

Husband v. Pierce, 800 S.W.2d 661 (Tex. App.—Tyler 1990, orig. proceeding). If there was a reasonable appearance of authority by the person conducting the marriage ceremony, at least one party to the marriage participated in the ceremony in good faith, and that party has treated the marriage as valid, the marriage is valid whether or not it was conducted by a person authorized by this section even in the absence of a valid marriage license authorizing a marriage ceremony.

Sec. 2.203. CEREMONY

(a) On receiving an unexpired marriage license, an authorized person may conduct the marriage ceremony as provided by this subchapter.

(b) A person may assent to marriage by the appearance of a proxy appointed in the affidavit authorized by Subchapter A if the person is:

(1) a member of the armed forces of the United States stationed in another country in support of combat or another military operation; and

(2) unable to attend the ceremony.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 650 (H.B. 869), Sec. 4, eff. September 1, 2013.

COMMENTS

There is no specific requirement in Texas for the form of the marriage ceremony itself and no specific language that must be used.

Sec. 2.204. 72-HOUR WAITING PERIOD; EXCEPTIONS

(a) Except as provided by this section, a marriage ceremony may not take place during the 72-hour period immediately following the issuance of the marriage license.

(b) The 72-hour waiting period after issuance of a marriage license does not apply to an applicant who:

(1) is a member of the armed forces of the United States and on active duty;

(2) is not a member of the armed forces of the United States but performs work for the United States Department of Defense as a department employee or under a contract with the department;

(3) obtains a written waiver under Subsection (c); or

(4) completes a premarital education course described by Section 2.013, and who provides to the county clerk a premarital education course completion certificate indicating completion of the premarital education course not more than one year before the date the marriage license application is filed with the clerk.

(c) An applicant may request a judge of a court with jurisdiction in family law cases, a justice of the supreme court, a judge of the court of criminal appeals, a county judge, or a judge of a court of appeals for a written waiver permitting the marriage ceremony to take place during the 72-hour period immediately following the issuance of the marriage license. If the judge finds that there is good cause for the marriage to take place during the period, the judge shall sign the waiver. Notwithstanding any other provision of law, a judge under this section has the authority to sign a waiver under this section.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., ch. 1052, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 1196 (H.B. 418), Sec. 1, eff. June 18, 2005. Acts 2007, 80th Leg., R.S., Ch. 327, (H.B. 2685), Sec. 2, eff. September 1, 2008.

ANNOTATIONS

Coulter v. Melady, 489 S.W.2d 156 (Tex. Civ. App.—Texarkana 1972, writ ref'd n.r.e.). There is no set form or procedure for the marriage ceremony. As long as both parties to a marriage consent to be married, it is not necessary for either party to respond audibly to the official's questions during the marriage ceremony. However, both free consent and agreement of the parties are essential to a valid ceremonial marriage. A party's prior actions can demonstrate consent as a matter of law, such as applying for a license and participating in a ceremony.

Dickerson v. Texas Employers' Insurance Ass'n, 451 S.W.2d 794 (Tex. Civ. App.—Dallas 1970, no writ). There is a strong legal presumption that persons who marry are legally free to do so.

Sec. 2.205. DISCRIMINATION IN CONDUCTING MARRIAGE PROHIBITED

(a) A person authorized to conduct a marriage ceremony by this subchapter is prohibited from discriminating on the basis of race, religion, or national origin against an applicant who is otherwise competent to be married.

(b) On a finding by the State Commission on Judicial Conduct that a person has intentionally violated Subsection (a), the commission may recommend to the supreme court that the person be removed from office.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Discrimination based on gender is omitted from this section because Texas recognizes marriage as a union only between a man and a woman.

Sec. 2.206. RETURN OF LICENSE; PENALTY

(a) The person who conducts a marriage ceremony shall record on the license the date on which and the county in which the ceremony is performed and the person's name, subscribe the license, and return the license to the county clerk who issued it not later than the 30th day after the date the ceremony is conducted.

(b) A person who fails to comply with this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $200 and not more than $500.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 2.207. MARRIAGE CONDUCTED AFTER LICENSE EXPIRED; PENALTY

(a) A person who is to conduct a marriage ceremony shall determine whether the license has expired from the county clerk's endorsement on the license.

(b) A person who conducts a marriage ceremony after the marriage license has expired commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $200 and not more than $500.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 2.208. RECORDING AND DELIVERY OF LICENSE

(a) The county clerk shall record a returned marriage license and mail the license to the address indicated on the application. **On request by the applicants, the county clerk may e-mail the marriage license to an e-mail address provided to the county clerk by the applicants in addition to mailing the license.**

(b) On the application form the county clerk shall record:

(1) the date of the marriage ceremony;

(2) the county in which the ceremony was conducted; and

(3) the name of the person who conducted the ceremony.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2019, 86th Leg., H.B. 2767, Sec. 1, eff. Sept. 1, 2019.

Sec. 2.209. DUPLICATE LICENSE

(a) On request, the county clerk shall issue a certified copy of a recorded marriage license.

(b) If a marriage license issued by a county clerk is lost, destroyed, or rendered useless, the clerk shall issue a duplicate license.

(c) If one or both parties to a marriage license discover an error on the recorded marriage license, both parties to the marriage shall execute a notarized affidavit stating the error. The county clerk shall file and record the affidavit as an amendment to the marriage license, and the affidavit is considered part of the marriage license. The clerk shall include a copy of the affidavit with any future certified copy of the marriage license issued by the clerk.

(d) The executive commissioner of the Health and Human Services Commission by rule shall prescribe the form of the affidavit under Subsection (c).

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 978 (H.B. 3666), Sec. 6, eff. September 1, 2009.

SUBCHAPTER D. VALIDITY OF MARRIAGE

Sec. 2.301. FRAUD, MISTAKE, OR ILLEGALITY IN OBTAINING LICENSE

Except as otherwise provided by this chapter, the validity of a marriage is not affected by any fraud, mistake, or illegality that occurred in obtaining the marriage license.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section evidences Texas' strong public policy of supporting the validity of marriages.

ANNOTATIONS

Foster v. State, 31 Tex. Crim. 409, 20 S.W. 823 (1892). A ministerial mistake by the clerk in issuing a marriage license did not invalidate a marriage that had been solemnly consummated between the parties.

Williams v. White, 263 S.W.2d 666 (Tex. Civ. App.—Austin 1953, writ ref'd n.r.e.) (per curiam). The statutes regulating the mode of entering into the marriage relation, including the consent of the parents, and provisions requiring that a license be obtained before performance of the marriage ceremony, are merely directory. Even if a marriage is entered into otherwise than in accordance with the provisions of such statutes, it is nevertheless a valid marriage unless the statute declares that its violation shall render the marriage void.

RESOURCES

James W. Harper & George M. Clifton, *Heterosexuality: A Prerequisite to Marriage in Texas?* 14 S. Tex. L.J. 220 (1973).

Joseph W. McKnight & Louise Ballerstedt Raggio, *Annual Survey of Texas Law: Status of Husband and Wife*, 25 Sw. L.J. 34 (1971).

Sec. 2.302. CEREMONY CONDUCTED BY UNAUTHORIZED PERSON

The validity of a marriage is not affected by the lack of authority of the person conducting the marriage ceremony if:

(1) there was a reasonable appearance of authority by that person;

(2) at least one party to the marriage participated in the ceremony in good faith and that party treats the marriage as valid; and

(3) neither party to the marriage:

(A) is a minor whose marriage is prohibited by law; or

(B) by marrying commits an offense under Section 25.01, Penal Code.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.11, eff. September 1, 2005.

COMMENTS

Tex. Penal Code § 25.01 outlaws bigamy.

ANNOTATIONS

Husband v. Pierce, 800 S.W.2d 661 (Tex. App.—Tyler 1990, orig. proceeding). If there was a reasonable appearance of authority by the person conducting the marriage ceremony, at least one party to the marriage participated in the ceremony in good faith, and that party has treated the marriage as valid, the marriage is valid whether or not it was conducted by a person authorized by this section even in the absence of a valid marriage license authorizing a marriage ceremony.

SUBCHAPTER E. MARRIAGE WITHOUT FORMALITIES

Sec. 2.401. PROOF OF INFORMAL MARRIAGE

(a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

(1) a declaration of their marriage has been signed as provided by this subchapter; or

(2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

(b) If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married.

(c) A person under 18 years of age may not:

(1) be a party to an informal marriage; or

(2) execute a declaration of informal marriage under Section 2.402.

(d) A person may not be a party to an informal marriage or execute a declaration of an informal marriage if the person is presently married to a person who is not the other party to the informal marriage or declaration of an informal marriage, as applicable.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., ch. 1362, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.12, eff. September 1, 2005.

COMMENTS

If the parties have not executed and registered a declaration of informal marriage as prescribed under Tex. Fam. Code § 2.402, a party claiming the existence of a marriage must establish that he or she has met the statutory requirements for an informal marriage enumerated above and had the capacity to enter into the marriage.

The following parties cannot enter into an informal marriage: (1) a person under the age of eighteen; (2) parties of the same gender; (3) related parties (including an ancestor or descendant, whether by blood or adoption; a brother or sister, whether by whole or half blood or by adoption; a parent's brother or sister, whether by whole or half blood or by adoption; a brother's or sister's son or daughter, whether by whole or half blood or by adoption; a current or former stepchild or stepparent; and a son or daughter of a parent's brother or sister, whether by whole or half blood or by adoption); and (4) a person who is presently married to someone who is not the other party to the informal marriage.

The informal marriage begins when all the statutory elements are concurrently satisfied in Texas and the parties have the capacity to marry. An informal marriage, like a ceremonial marriage, lasts until it is dissolved by death, divorce, or annulment.

An informal marriage has the same legal consequences and effects as a ceremonial marriage.

Section 2.401 was recognized as unconstitutional by *Ranolls v. Dewling*, 223 F. Supp. 3d 613 (2016).

ANNOTATIONS

Ranolls v. Dewling, No.1:15-CV-00111, 2016 WL 7726597 (E.D. Tex. Sept. 22, 2016). Intervenor's claim survived summary judgment in wrongful death and survivor action based on alleged informal marriage that took place prior to *Obergefell* decision of June 26, 2015.

Russell v. Russell, 865 S.W.2d 929 (Tex. 1993). A party can establish proof of an informal marriage by either direct or circumstantial evidence.

Estate of Claveria v. Claveria, 615 S.W.2d 164 (Tex. 1981). Cohabitation means living together as husband and wife, maintaining a household, and doing things ordinarily done by a husband and wife. Cohabitation is more than just sexual relations under a common roof. For purposes of establishing a common-law marriage, an inferred agreement to be married must be a present agreement, unconditional and unqualified, to be husband and wife as long as both of the spouses shall live.

Collora v. Navarro, 574 S.W.2d 65 (Tex. 1978). The Texas Supreme Court upheld a directed verdict finding a common-law marriage based upon the uncorroborated testimony of a surviving widow that there had been a present agreement between herself and the decedent to be husband and wife when the other elements of common-law marriage were conclusively proved by evidence other than the widow's testimony.

Ex parte Threet, 333 S.W.2d 361 (Tex. 1960, orig. proceeding). Under Texas law, there can be no secret common-law marriage between the parties. The parties must fulfill the statutory requirement of explicitly holding themselves out to others that they are living together as husband and wife.

In re O.R.M., 559 S.W.3d 738 (Tex. App.—El Paso 2018, no pet.). Father argued in a termination case that he was the presumed father by informal marriage. Father was unable to prove an agreement to be married. An agreement to be married, as required for an informal marriage to exist, cannot be inferred from the mere evidence of cohabitation and representations of marriage to others, but this evidence may be circumstantial evidence of an agreement to be married.

In re C.M.V., 479 S.W.3d 352, 360 (Tex. App.—El Paso 2015, no pet.). To establish that the parties agreed to be husband and wife, as required to establish a common-law marriage, it must be shown that they intended to create an immediate and permanent marriage relationship, not merely a temporary cohabitation that may be ended by either party. *Farrell v. Farrell*, 459 S.W.3d 114, 118 (Tex. App.—El Paso 2015, no pet.). An informal or common law marriage does not exist unless all three elements are present, and all three elements must exist at the same time.

Small v. McMaster, 352 S.W.3d 280 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). An informal marriage exists in Texas if the parties (1) agreed to be married; (2) lived together in Texas as husband and wife after the agreement; and (3) represented to others that they were married. The existence of an informal marriage is a fact question. The party seeking to establish the existence of the marriage bears the burden of proving the elements by a preponderance of the evidence. An informal marriage does not exist until all three elements are present.

Nguyen v. Nguyen, 355 S.W.3d 82 (Tex. App.—Houston [1st Dist.] 2011, pet. denied). An informal marriage does not exist until all the statutory elements are concurrently satisfied: (1) agreement of the parties to be married; (2) living together in Texas as husband and wife; and (3) representing to others in Texas that they are married.

Joplin v. Borusheski, 244 S.W.3d 607 (Tex. App.—Dallas 2008, no pet.). The existence of a common-law marriage is a question of fact to be resolved by the fact finder.

Cardwell v. Cardwell, 195 S.W.3d 856 (Tex. App.—Dallas 2006, no pet.). A common-law marriage came into existence at the termination of a wife's prior marriage.

Phillips v. Dow Chemical Co., 186 S.W.3d 121 (Tex. App.—Houston [1st Dist.] 2005, no pet.). An alleged common law marriage can be invalidated by an undissolved prior marriage.

Kingery v. Hintz, 124 S.W.3d 875 (Tex. App.—Houston [14th Dist.] 2003, no pet.). The Family Code clearly states that a person under the age of eighteen years may not be a party to an informal marriage. A party seeking to establish an informal marriage must demonstrate that he or she is legally capable of marrying. Therefore, a minor is emancipated only after entering into a legal marriage.

Eris v. Phares, 39 S.W.3d 708 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). One party alone holding out to the public that the parties are married as husband and wife, is insufficient evidence to prove a common law marriage. Both parties must represent to others that they are married.

Villegas v. Griffin Industries, 975 S.W.2d 745 (Tex. App.—Corpus Christi 1998, pet. denied). Informal marriages, like ceremonial marriages, can be dissolved by only death of one spouse, divorce, or annulment.

Flores v. Flores, 847 S.W.2d 648 (Tex. App.—Waco 1993, writ denied). The evidence must show that the parties intended to have a present, immediate, and permanent marital relationship. Further, the parties must agree to be husband and wife. Until all three elements of a common-law marriage exist, even though they may occur at different times, there can be no common-law marriage.

Roach v. Roach, 672 S.W.2d 524 (Tex. Civ. App.—Amarillo 1984, no writ). Each case of claimed common-law marriage must be determined upon its own facts.

Rosetta v. Rosetta, 525 S.W.2d 255 (Tex. Civ. App.—Tyler 1975, no writ). A present agreement to be married is a necessary element of common-law marriage. A common-law marriage is not established by an agreement on present cohabitation and a future marriage.

RESOURCES

Steven K. Berenson, *Should Cohabitation Matter in Family Law?* 13 J.L. & Fam. Stud. 289 (2011).

Katherine A. Kinser & Jonathan J. Bates, *Cohabitation, Domestic Partnership, Premarital & Post-Marital Property Agreements*, Adv. Fam. L. (2010).

Karen J. Langsley & Shelly L. Skeen, *Same Sex Issues: Parentage Presumption, Adoption, Birth Certificates (and Then Some)*, Adv. Fam. L. (2016).

Shelly L. Skeen, *State of Rights Post*-Obergefell, Adv. Fam. L. (2016).

Sec. 2.402. DECLARATION AND REGISTRATION OF INFORMAL MARRIAGE

(a) A declaration of informal marriage must be signed on a form prescribed by the bureau of vital statistics and provided by the county clerk. Each party to the declaration shall provide the information required in the form.

(b) The declaration form must contain:

(1) a heading entitled "Declaration and Registration of Informal Marriage, _____ County, Texas";

(2) spaces for each party's full name, including the woman's maiden surname, address, date of birth, place of birth, including city, county, and state, and social security number, if any;

(3) a space for indicating the type of document tendered by each party as proof of age and identity;

(4) printed boxes for each party to check "true" or "false" in response to the following statement: "The other party is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption;

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild or stepparent; or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.";

(5) a printed declaration and oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS HUSBAND AND WIFE AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE WERE MARRIED. SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.";

(6) spaces immediately below the printed declaration and oath for the parties' signatures; and

(7) a certificate of the county clerk that the parties made the declaration and oath and the place and date it was made.

(c) Repealed by Acts 1997, 75th Leg., ch. 1362, Sec. 4, eff. Sept. 1, 1997.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., ch. 1362, Sec. 4, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.13, eff. September 1, 2005.

ANNOTATIONS

Colburn v. State, 966 S.W.2d 511 (Tex. Crim. App. 1998). Declaration and registration is simply a method of establishing a common-law marriage. It is not an independent basis upon which a marriage may be founded.

Amaye v. Oravetz, 57 S.W.3d 581 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). A declaration and registration is simply a method of establishing a common-law marriage. It is not an independent basis upon which a marriage may be founded.

Sec. 2.403. PROOF OF IDENTITY AND AGE; OFFENSE

(a) The county clerk shall require proof of the identity and age of each party to the declaration of informal marriage to be established by a document listed in Section 2.005(b).

(b) A person commits an offense if the person knowingly provides false, fraudulent, or otherwise inaccurate proof of the person's identity or age under this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.14, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 978 (H.B. 3666), Sec. 7, eff. September 1, 2009.

Sec. 2.404. RECORDING OF CERTIFICATE OR DECLARATION OF INFORMAL MARRIAGE

(a) The county clerk shall:

(1) determine that all necessary information is recorded on the declaration of informal marriage form and that all necessary documents are submitted to the clerk;

(2) administer the oath to each party to the declaration;

(3) have each party sign the declaration in the clerk's presence; and

(4) execute the clerk's certificate to the declaration.

(a–1) On the proper execution of the declaration, the clerk may:

(1) prepare a certificate of informal marriage;

(2) enter on the certificate the names of the persons declaring their informal marriage and the date the certificate or declaration is issued; and

(3) record the time at which the certificate or declaration is issued.

(b) The county clerk may not certify the declaration or issue or record the certificate of informal marriage or declaration if:

(1) either party fails to supply any information or provide any document required by this subchapter;

(2) either party is under 18 years of age; or

(3) either party checks "false" in response to the statement of relationship to the other party.

(c) On execution of the declaration, the county clerk shall record the declaration or certificate of informal marriage, deliver the original of the declaration to the parties, deliver the original of the certifi-

cate of informal marriage to the parties, if a certificate was prepared, and send a copy of the declaration of informal marriage to the bureau of vital statistics.

(d) An executed declaration or a certificate of informal marriage recorded as provided in this section is prima facie evidence of the marriage of the parties.

(e) At the time the parties sign the declaration, the clerk shall distribute to each party printed materials about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). The clerk shall note on the declaration that the distribution was made. The materials shall be prepared and provided to the clerk by the Texas Department of Health and shall be designed to inform the parties about:

(1) the incidence and mode of transmission of AIDS and HIV;

(2) the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and

(3) available and appropriate counseling services regarding AIDS and HIV infection.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., ch. 1362, Sec. 2, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 978 (H.B. 3666), Sec. 8, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 978 (H.B. 3666), Sec. 9, eff. September 1, 2009.

ANNOTATIONS

Husband v. Pierce, 800 S.W.2d 661 (Tex. App.—Tyler 1990, orig. proceeding). A declaration of informal marriage constitutes prima facie proof of an informal marriage even though the validity of a common-law marriage does not depend upon a declaration of informal marriage.

Sec. 2.405. VIOLATION BY COUNTY CLERK; PENALTY

A county clerk or deputy county clerk who violates this subchapter commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $200 and not more than $500.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER F. RIGHTS AND DUTIES OF SPOUSES

Sec. 2.501. DUTY TO SUPPORT

(a) Each spouse has the duty to support the other spouse.

(b) A spouse who fails to discharge the duty of support is liable to any person who provides necessaries to the spouse to whom support is owed.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Ex parte Hall, 854 S.W.2d 656 (Tex. 1993, orig. proceeding). The obligation that the law imposes on spouses to support one another is not considered a "debt" under the Texas Constitution, but a legal duty arising out of the status of the parties. A person may also, however, contract to support his or her spouse. A contractual obligation, to the extent it exceeds a spouse's legal duty of support, is a debt.

In re Marriage of Case, 28 S.W.3d 154 (Tex. App.—Texarkana 2000, no pet.). There is no right to reimbursement for separate property funds spent on community living expenses because each spouse has a duty to support the family.

Graham v. Graham, 836 S.W.2d 308 (Tex. App.—Texarkana 1992, no writ). Spouses are obligated to provide support for community living expenses using separate property, if necessary.

RESOURCES

Thomas M. Featherston, Jr. & Lynda S. Still, *Marital Liability in Texas . . . Till Death, Divorce, or Bankruptcy Do They Part*, 44 Baylor L. Rev. 1 (1992).

SUBCHAPTER G. FREEDOM OF RELIGION WITH RESPECT TO RECOGNIZING OR PERFORMING CERTAIN MARRIAGES

Sec. 2.601. RIGHTS OF CERTAIN RELIGIOUS ORGANIZATIONS

A religious organization, an organization supervised or controlled by or in connection with a religious organization, an individual employed by a religious organization while acting in the scope of that employment, or a clergy or minister may not be required to solemnize any marriage or provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration of any marriage if the action would cause the organization or individual to violate a sincerely held religious belief.

Added by Acts 2015, 84th Leg., R.S., Ch. 434 (S.B. 2065), Sec. 1, eff. June 11, 2015.

Sec. 2.602. DISCRIMINATION AGAINST RELIGIOUS ORGANIZATION PROHIBITED

A refusal to provide services, accommodations, facilities, goods, or privileges under Section 2.601 is not the basis for a civil or criminal cause of action or any other action by this state or a political subdivision of this state to penalize or withhold benefits or privileges, including tax exemptions or governmental contracts, grants, or licenses, from any protected organization or individual.

Added by Acts 2015, 84th Leg., R.S., Ch. 434 (S.B. 2065), Sec. 1, eff. June 11, 2015.

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SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

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SUBCHAPTER A. GENERAL RULES FOR SEPARATE AND COMMUNITY PROPERTY

Sec. 3.001. SEPARATE PROPERTY

A spouse's separate property consists of:

(1) the property owned or claimed by the spouse before marriage;

(2) the property acquired by the spouse during marriage by gift, devise, or descent; and

(3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section is derived from Tex. Const. art. XVI, § 15, which defines separate and community property. Characterizing marital property in Texas as either community property or separate property is essentially a task of elimination. If property falls within a delineated category as separate property, the property is separate property. All other property is community property.

ANNOTATIONS

Property owned or claimed by a spouse before marriage

Jensen v. Jensen, 665 S.W.2d 107 (Tex. 1984). Texas uses the "inception of title" rule to characterize property. This rule characterizes marital property as separate even though the legal title or evidence of title might not be obtained until after marriage. The status of the property is determined by the origin of the title to the property, not by the acquisition of the final title. Inception of title occurs when a party first has a right of claim to the property by virtue of which title is finally vested. Jensen also holds that an increase of value of property during marriage, even if the increase is due to the time, toil, and effort of either or both spouses, does not cause separate property to become community property.

Zagorski v. Zagorski, 116 S.W.3d 309 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). To establish that separate property has mutated, the separate property must be traced. Tracing is a process that involves establishing a separate interest in the property through evidence showing the time and means by which the spouse originally obtained possession of the property.

Smith v. Smith, 22 S.W.3d 140 (Tex. App.—Houston [14th Dist.] 2000, no pet.). The evidentiary standard applicable to tracing is clear and convincing evidence, which is defined as the degree of proof that will produce, in the mind of the trier of fact, a firm belief or conviction about the allegation sought to be established.

Wierzchula v. Wierzchula, 623 S.W.2d 730 (Tex. App.—Houston [1st Dist.] 1981, no writ). When a spouse enters into an earnest money contract before marriage but does not close the purchase of the real estate until after marriage, the property is the separate property of the contracting spouse.

Gifts

Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975). When one spouse uses separate property to pay for property acquired during marriage, but then takes title to the property in the names of both spouses jointly, a presumption arises that a gift is intended.

Hilley v. Hilley, 342 S.W.2d 565 (Tex. 1961). A gift is a voluntary transfer of property to another made gratuitously and without consideration.

Harmon v. Schmitz, 39 S.W.2d 587 (Tex. Comm'n App. 1931, judgm't adopted). A gift requires the owner to deliver the property such that the owner releases all dominion and control over the property.

In re Marriage of Green & McDaniel, No. 12-17-00034-CV, 2017 WL 3224866 (Tex. App.—Tyler July 31, 2017, no pet.) (mem. op.). In establishing the fairness of a transaction involving a fiduciary, some of the most important factors are (1) whether there was full disclosure regarding the transaction; (2) whether the consideration, if any, was adequate; and (3) whether the beneficiary had the benefit of independent advice. Testimony by husband that his purpose in signing a quitclaim deed for real property to go to wife in the event of his death was sufficient for the court to conclude that there was not clear and convincing evidence that husband intended to give the property to wife as her separate property.

Pearson v. Pearson, No. 03-13-00802-CV, 2016 WL 240683 (Tex. App.—Austin Jan. 15, 2016, no pet.) (mem. op.). A transfer of property between family members who are the natural object of one's bounty gives rise to a presumption of a gift. Just as the burden to prove separate property is clear and convincing evidence, the burden to overcome the presumption of a gift is also clear and convincing evidence.

In re Marriage of McMahen, No. 07-13-00172-CV, 2014 WL 2582886 (Tex. App.—Amarillo June 6, 2014, no pet.) (mem. op.). Wife's parents gave monies to wife, husband, and the parties' child. Wife's parents testified that their intent was to give all the monies to their daughter but that they wrote three separate checks for tax purposes. The court of appeals overturned the trial court's ruling that the entire gift was wife's separate property.

Pankhurst v. Weitinger & Tucker, 850 S.W.2d 726 (Tex. App.—Corpus Christi 1993, writ denied). Three elements are necessary to establish the existence of a gift: (1) intent to make a gift, (2) delivery of the property, and (3) acceptance of the property.

Estate of Bridges v. Mosebrook, 662 S.W.2d 116 (Tex. App.—Fort Worth 1983, writ ref'd n.r.e.). Actual delivery is not always necessary for a gift to be made. When circumstances make actual delivery impractical, delivery may be symbolic or constructive.

Woodworth v. Cortez, 660 S.W.2d 561 (Tex. App.—San Antonio 1983, writ ref'd n.r.e.). A promise to give property in the future is generally not a gift because the promise is unenforceable without consideration.

Property acquired by devise or descent

Henry v. Reinle, 245 S.W.2d 743 (Tex. Civ. App.—Waco 1952, writ ref'd n.r.e.). When character as separate property attaches, it is immaterial that part of the unpaid purchase price is thereafter paid from community funds. Property acquired by devise or descent does not become community property through the use of community funds to discharge a lien on the property or to make improvements to it.

Johnson v. McLaughlin, 840 S.W.2d 668 (Tex. App.—Austin 1992, no writ). Whether by devise or descent, legal title vests in beneficiaries upon the death of the decedent.

Sullivan v. Skinner, 66 S.W. 680 (Tex. Civ. App. 1902, writ ref'd). Any interest devised to a spouse, whether a fee or a lesser interest, belongs to that spouse as separate property.

Recovery for personal injuries

Graham v. Franco, 488 S.W.2d 390 (Tex. 1972). Recovery for personal injuries to the body of a spouse, including disfigurement and past and future pain and suffering, is the separate property of the injured spouse. Recovery for lost wages, past and future, is community property.

Kyles v. Kyles, 832 S.W.2d 194 (Tex. App.—Beaumont 1992, no writ). If a party does not prove which amounts, if any, of the proceeds from a personal injury settlement are separate property and community property, the entire proceeds are conclusively presumed to be community property.

Social Security benefits

In re Marriage of Everse, 440 S.W.3d 749 (Tex. App.—Amarillo 2013, no pet.). Social Security benefits, even though received at the time of divorce and held in bank accounts, are not subject to division as part of the community estate.

Trust distributions

Benavides v. Mathis, 433 S.W.3d 59 (Tex. App.—San Antonio 2014, pet. denied). Income distributions received by an income beneficiary during marriage from a trust established before the marriage are separate property if the beneficiary has no present possessory interest in the corpus of the trust.

RESOURCES

Wendy S. Burgower & Sara Springer Valentine, *Characterization & Tracing: A New Spin on an Old Topic*, Marriage Dissolution (2011).

Randall Scott Downing, *Characterization: Categories, Code, Case Law*, Marriage Dissolution (2013).

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Kathryn J. Murphy, *Characterization*, Adv. Fam. L. (2016).

Richard R. Orsinger, *Troubling Issues of Characterization, Reimbursement, Valuation, and Division Upon Divorce*, Adv. Fam. L. (2010).

Clint Joseph Westhoff, *Characterization and Tracing*, Adv. Fam. L. (2013).

Sec. 3.002. COMMUNITY PROPERTY

Community property consists of the property, other than separate property, acquired by either spouse during marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Characterizing property in Texas is essentially a process of elimination. Rarely does Texas law specify that certain property is community property. Rather, Texas law specifies that certain property is separate property and that all remaining property is community property.

ANNOTATIONS

Jensen v. Jensen, 665 S.W.2d 107 (Tex. 1984). When separate property corporate stock has increased in value during marriage due, at least in part, to the time and effort of either or both spouses, the stock remains separate property. However, a claim for reimbursement may arise.

Graham v. Franco, 488 S.W.2d 390 (Tex. 1972). Property acquired by the joint efforts of the spouses is regarded as acquired from "onerous title" and belongs to the community estate.

Hilley v. Hilley, 342 S.W.2d 565 (Tex. 1961). All marital property, if not specifically included within the scope of the statutory and constitutional definition of separate property, is by implication excluded. Therefore, it is community property regardless of how it was acquired.

Norris v. Vaughan, 260 S.W.2d 676 (Tex. 1953). As long as separate property can be definitively traced and identified, it remains separate property even if the separate property undergoes mutations and changes. When a lessor receives a royalty for oil or gas produced from the lessor's separate property, the royalty is payment for the extraction or waste of the separate estate and remains separate property.

Arnold v. Leonard, 273 S.W. 799 (Tex. 1925). Income from separate property is community property.

Lee v. Lee, 247 S.W. 828 (Tex. 1923). Community property consists of all property acquired by a husband and wife during marriage except the separate property of either husband or wife.

Ruiz v. Ruiz, No. 04-16-00016-CV, 2016 WL 7445121 (Tex. App.—San Antonio Dec. 28, 2016, no pet.) (mem. op.). The parties had selected a separate property regime under Mexican law at the time of their marriage. Under Texas law, husband was nonetheless required to trace his separate property, and he could not rely solely upon the regime that the parties selected. This selection also did not eliminate the Texas community property presumption.

Dillingham v. Dillingham, 434 S.W.2d 459 (Tex. Civ. App.—Fort Worth 1968, writ dism'd w.o.j.). A mere increase in the value of separate property stock does not affect the character of that stock as separate property.

RESOURCES

Wendy S. Burgower & Sara Springer Valentine, *Characterization & Tracing: A New Spin on an Old Topic*, Marriage Dissolution (2011).

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Kathryn J. Murphy, *Characterization*, Adv. Fam. L. (2016).

Richard R. Orsinger, *Troubling Issues of Characterization, Reimbursement, Valuation, and Division Upon Divorce*, Adv. Fam. L. (2010).

Sec. 3.003. PRESUMPTION OF COMMUNITY PROPERTY

(a) Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.

(b) The degree of proof necessary to establish that property is separate property is clear and convincing evidence.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

The clear and convincing evidentiary standard substantially increases the difficulty of proving separate property. Several cases, including *Boyd v. Boyd*, 131 S.W.3d 605 (Tex. App.—Fort Worth 2004, no pet.), require documentation as opposed to mere oral testimony to meet the clear and convincing standard. Other decisions, such as *Pace v. Pace*, 160 S.W.3d 706 (Tex. App.—Dallas 2005, pet. denied), uphold separate property findings based solely on oral testimony. Clearly, the better practice, and perhaps an essential practice, is to prepare a detailed tracing with supporting documents.

ANNOTATIONS

Pearson v. Fillingim, 332 S.W.3d 361 (Tex. 2011) (per curiam). This section codifies the common-law presumption that property possessed by either spouse during or upon dissolution of marriage is community property. A spouse who claims that certain property is separate property has the burden of rebutting this presumption. The presumption can be rebutted by tracing and clearly identifying the property as separate by clear and convincing evidence.

Transportation Insurance Co. v. Moriel, 879 S.W.2d 10 (Tex. 1994). Clear and convincing evidence is the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction about the allegation sought to be established.

Jensen v. Jensen, 665 S.W.2d 107 (Tex. 1984). Inception of title occurs when a party first has a right of claim to property by virtue of which title is finally vested.

Henry S. Miller Co. v. Evans, 452 S.W.2d 426 (Tex. 1970). Under the inception of title doctrine, the character of property, whether separate or community, is fixed at the time of its acquisition.

Hilley v. Hilley, 342 S.W.2d 565 (Tex. 1961). The character of property as separate or community is determined at the time and under the circumstances of acquisition.

Yamin v. Carroll Wayne Conn, L.P., ___ S.W.3d ___, No. 14-16-00715-CV, 2018 WL 6722669 (Tex. App.—Houston [14th Dist.] Dec. 21, 2018, pet. filed) (citations omitted). "If property is titled in one spouse's name as that spouse's separate property, then the presumption of community property is replaced with a presumption that the property is the spouse's separate property."

Pace v. Pace, 160 S.W.3d 706 (Tex. App.—Dallas 2005, pet. denied). A wife who inherited assets before marriage testified that she placed these assets into an account and instructed her brokerage firm to "sweep" all income from her

account. The wife did not specifically trace these assets. She moved for summary judgment as to characterization, supporting her motion by her own affidavit and that of her broker. The court of appeals upheld the trial court's grant of a summary judgment.

Boyd v. Boyd, 131 S.W.3d 605 (Tex. App.—Fort Worth 2004, no pet.). As a general rule, mere testimony without tracing is insufficient to overcome the community property presumption. The court applied this rule when a husband testified that he sold separate property vehicles, used the proceeds to pay off a debt against a residence, sold the residence, and then used the proceeds to pay down debt against another residence. The husband's testimony was clear, but he offered no documents to support his testimony. The husband's evidence was factually insufficient to prove, by clear and convincing evidence, that the funds he used to pay down debt were his separate property.

Methods of tracing

Estate of Hanau v. Hanau, 730 S.W.2d 663 (Tex. 1987). The "clearinghouse" rule can apply when a spouse temporarily deposits separate funds into an account containing community funds, then withdraws the separate funds. The rule assumes that after a spouse deposits identifiable sums of separate funds into such an account, identifiable withdrawals of the separate funds do not lose their separate property character.

Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975). "Item tracing" or "asset tracing" requires a spouse asserting a separate property claim, other than cash, to trace the original separate asset into the particular assets on hand during the marriage.

Smith v. Smith, 22 S.W.3d 140 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Under the "community out first" rule, a court presumes that withdrawals from a mixed separate and community fund are community to the extent that community assets exist in the account. The court presumes that withdrawals are from separate funds only after community assets have been exhausted. A party attempting to rebut the community presumption must produce clear and convincing evidence of the transactions affecting the commingled account.

Padon v. Padon, 670 S.W.2d 354 (Tex. App.—San Antonio 1984, no writ). The "minimum sum balance" method of tracing applies the community-out-first rule when the balance of an account never falls below a specified amount proven to be separate property. This method recognizes that the remaining funds in the account are separate property after all other withdrawals are made.

Loan v. Barge, 568 S.W.2d 863 (Tex. Civ. App.—Beaumont 1978, writ ref'd n.r.e.). Item tracing or asset tracing requires not only proof of how a spouse obtained alleged separate property but also evidence clearly establishing the origin of the asset.

In re Marriage of Tandy, 532 S.W.2d 714 (Tex. Civ. App.—Amarillo 1976, no writ). "Value tracing" applies when cash assets are traced. Value tracing recognizes that one dollar has the same value as another dollar. The mixing of dollars does not commingle them when the number owned by each estate is known.

RESOURCES

Wendy S. Burgower & Sara Springer Valentine, *Characterization & Tracing: A New Spin on an Old Topic*, Marriage Dissolution (2011).

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Kathryn J. Murphy, *Characterization*, Adv. Fam. L. (2016).

Richard R. Orsinger, *Different Ways to Trace Separate Property*, Adv. Fam. L. (2014).

Richard R. Orsinger, *Troubling Issues of Characterization, Reimbursement, Valuation, and Division Upon Divorce*, Adv. Fam. L. (2010).

Sec. 3.004. RECORDATION OF SEPARATE PROPERTY

(a) A subscribed and acknowledged schedule of a spouse's separate property may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property is located.

(b) A schedule of a spouse's separate real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the deed records of the county in which the real property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Milbank v. Tomlin (In re Tomlin), Bankr. No. 99-35175-BJH-7, Adv. No. 01-3458 (Bankr. N.D. Tex. Aug. 27, 2003), *discharge denied, Sierra Investment Associates v. Tomlin (In re Tomlin)*, Bankr. No. 99-35175-BJH-7, Adv. No. 01-03458-BJH (N.D. Tex. Apr. 29, 2004). A court may consider whether a spouse recorded a separate property schedule, or failed to record one, when determining whether that spouse has overcome the community property presumption by clear and convincing evidence.

RESOURCES

Charles E. Hardy & Kelly Koch, *Analyzing Your Property Case: A Prequel to Characterization, Valuation and Division of the Marital Estate*, Adv. Fam. L. (2009).

Sec. 3.005. GIFTS BETWEEN SPOUSES

If one spouse makes a gift of property to the other spouse, the gift is presumed to include all the income and property that may arise from that property.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This provision is derived from Tex. Const. art. XVI, § 15. In 1980, voters significantly changed section 15 by amending it to presume that a gift from one spouse to the other includes income or property from the gift.

PRACTICE TIPS

This section is a potential trap for lawyers. When instructing an accountant to perform a tracing involving a spousal gift, consider instructing the accountant to prepare two distinct tracing schedules. The first tracing schedule treats income from a spousal gift as separate property. The second tracing schedule treats income from a spousal gift as community property. Using this methodology avoids the risk of failure of the entire tracing if the opposing party rebuts the gift presumption.

ANNOTATIONS

Maldonado v. Maldonado, 556 S.W.3d 407 (Tex. App.—Houston [1st Dist.] 2018, no pet.). "To establish the existence of a gift, the party must prove: (1) intent to make a gift; (2) delivery of the property; and (3) acceptance of the property. The burden of proving that property was acquired by gift is on the recipient."

Winger v. Pianka, 831 S.W.2d 853 (Tex. App.—Austin 1992, writ denied). Since the 1980 constitutional amendment to Tex. Const. art. XVI, § 15, if one spouse makes a gift of property to the other, that gift is presumed to include all the income or property that might arise from that gift.

RESOURCES

Wendy S. Burgower & Sara Springer Valentine, *Characterization & Tracing: A New Spin on an Old Topic*, Marriage Dissolution (2011).

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Kathryn J. Murphy, *Characterization*, Adv. Fam. L. (2016).

Sec. 3.006. PROPORTIONAL OWNERSHIP OF PROPERTY BY MARITAL ESTATES

If the community estate of the spouses and the separate estate of a spouse have an ownership interest in property, the respective ownership interests of the marital estates are determined by the rule of inception of title.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 838, Sec. 3, eff. Sept. 1, 2001.

COMMENTS

When the community estate and either or both separate estates contribute consideration toward the purchase of an asset, the general view is that the asset is owned by the estates in proportions equivalent to each estate's respective contribution toward the purchase. Further, when the community estate contributes consideration in the form of proceeds from a promissory note signed during marriage (absent a significant recital to look only to separate property for repayment), the proceeds of the promissory note are community property. Upon the sale of such an asset, it is important to apply the appropriate percentage of ownership calculation to the gross proceeds of sale and not, for example, after payment of a promissory note secured by a lien against the property.

ANNOTATIONS

Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975). Debts contracted during marriage are presumed to be based on community credit.

Gleich v. Bongio, 99 S.W.2d 881 (Tex. 1937). Money borrowed on a community obligation is community property. Similarly, property acquired on the credit of the community is community property. It has long been established that such an acquisition has the effect of creating a kind of tenancy in common between the separate and community estates, each owning an interest in the proportion that it supplied consideration for the asset.

Langston v. Langston, 82 S.W.3d 686 (Tex. App.—Eastland 2002, no pet.). The inception of title rule determines the ownership interests in property acquired by the community estate and by one or more of the spouses' separate estates.

Cook v. Cook, 679 S.W.2d 581 (Tex. App.—San Antonio 1984, no writ). A wife who contributed 43 percent of a residence's purchase price from her separate property owned a 43 percent interest in the residence as her separate property. The community estate owned the remaining 57 percent interest.

RESOURCES

Wendy S. Burgower & Sara Springer Valentine, *Characterization & Tracing: A New Spin on an Old Topic, Marriage Dissolution* (2011).

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Kathryn J. Murphy, *Characterization*, Adv. Fam. L. (2016).

Richard R. Orsinger, *Troubling Issues of Characterization, Reimbursement, Valuation, and Division Upon Divorce*, Adv. Fam. L. (2010).

Sec. 3.007. PROPERTY INTEREST IN CERTAIN EMPLOYEE BENEFITS

(a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(1), eff. September 1, 2009.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(1), eff. September 1, 2009.

(c) The separate property interest of a spouse in a defined contribution retirement plan may be traced using the tracing and characterization principles that apply to a nonretirement asset.

(d) A spouse who is a participant in an employer-provided stock option plan or an employer-provided restricted stock plan has a separate property interest in the options or restricted stock granted to the spouse under the plan as follows:

(1) if the option or stock was granted to the spouse before marriage but required continued employment during marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which:

(A) the numerator is the sum of:

(i) the period from the date the option or stock was granted until the date of marriage; and

(ii) if the option or stock also required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed; and

(B) the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed; and

(2) if the option or stock was granted to the spouse during the marriage but required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which:

(A) the numerator is the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed; and

(B) the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed.

(e) The computation described by Subsection (d) applies to each component of the benefit requiring varying periods of employment before the grant could be exercised or the restriction removed.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(1), eff. September 1, 2009.

Added by Acts 2005, 79th Leg., Ch. 490 (H.B. 410), Sec. 1, eff. September 1, 2005. Amended by: Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 1, eff. September 1, 2009.

COMMENTS

In 2005, the Texas legislature substantially amended this section. The 2005 amendments included provisions characterizing community and separate property interests in defined benefit plans when a change of marital status occurred during the time that a spouse participated in such a plan. In 2009, the legislature repealed those provisions.

A "defined benefit plan" is a retirement plan that specifies the particular benefit an employee will receive. A conventional monthly pension plan is a defined benefit plan. In contrast, a participant in a "defined contribution plan" does not know what the employee ultimately will receive, and no formula exists to make that determination. However, the employer and employee do know how much each has contributed to the plan, hence the term "defined contribution plan." An example of a defined contribution plan is the common 401(k) plan.

If a change in an employee's marital status occurs during an employee's participation in a defined benefit plan, separate and community interests in the plan are prorated on a simple fractional basis.

The remaining 2005 amendments, as amended in 2009, also contain provisions dealing with the characterization of restricted stock and stock options. These amendments essentially adopt a mathematically proportional approach.

PRACTICE TIPS

A practitioner must be cautious when one or both spouses participate in the Texas teacher retirement plan. Upon request, the Teacher Retirement System of Texas will provide a statement of the account that a particular teacher holds. However, the number provided usually understates the value of a teacher's plan.

ANNOTATIONS

Berry v. Berry, 647 S.W.2d 945 (Tex. 1983). When the value of a retirement benefit is at issue, the court must apportion the retirement benefit to the spouses based upon the value of the community's interest in the retirement benefit at the time of divorce.

Taggart v. Taggart, 552 S.W.2d 422 (Tex. 1977). Retirement benefits are subject to division as vested contingent community property rights even though a present right to them has not matured. The community interest in a defined benefit plan can be mathematically determined by apportioning the benefit between the number of months during which an employee participated in the plan during marriage and the total months necessary for accrual and maturity. *Cf. Hicks v. Hicks*, 348 S.W.3d 281 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (discussion regarding mathematical effects of *Berry*, 647 S.W.2d 945).

Cearley v. Cearley, 544 S.W.2d 661 (Tex. 1976). A court may divide retirement benefits on divorce even though they are neither accrued (i.e., the number of years required for pension eligibility has not been reached) nor matured (i.e., not all requirements have been met for immediate collection and enjoyment of a pension).

Herring v. Blakeley, 385 S.W.2d 843 (Tex. 1965). Employee benefits acquired by an employee spouse during marriage are community property.

Hicks v. Hicks, 348 S.W.3d 281 (Tex. App.—Houston [14th Dist.] 2011, no pet.). In *Berry*, 647 S.W.2d 945, the Texas Supreme Court altered the formula it established in *Taggart*, 552 S.W.2d 422. The court did so by changing the fraction's denominator to the number of months employed under the plan at the time of divorce. *Berry* also altered the valuation portion of the formula, requiring the value of the benefits to be calculated at the date of divorce. Thus, the *Berry* formula prevents a divorce court from awarding to the nonemployee spouse any portion of a postdivorce increase in retirement benefits that would invade the employee spouse's separate property, such as postdivorce raises, promotions, services rendered, or contributions.

Smith v. Smith, No. 05-07-00997-CV, 2008 WL 4277378 (Tex. App.—Dallas Sept. 19, 2008, no pet.) (mem. op.). A spouse who contends that a court incorrectly applied this section's formula bears the burden of introducing evidence to support that argument.

Warren v. Warren, No. 13-05-00429-CV, 2008 WL 668213 (Tex. App.—Corpus Christi Mar. 13, 2008, no pet.) (mem. op.). This section outlines a time-formula rule to establish the percentage of each stock option that is separate property based on the portion attributable to a spouse's separate property contribution. The numerator is the period in months from the date the option can be exercised. The denominator is the number of months from the date the option is granted to the date the option can be exercised. The fractions apply to each option to determine the separate property interest in each.

Smith v. Smith, 22 S.W.3d 140 (Tex. App.—Houston [14th Dist.] 2000, no pet.). A defined benefit plan promises employees a monthly benefit beginning at retirement. The benefit is based on the number of years of service the employee has at the time of retirement along with other factors such as age and salary history. Historically, defined benefit plans have been complicated to apportion upon divorce because their value at any given time is difficult to ascertain. The proper value of a defined contribution plan, on the other hand, is not difficult to determine. An employee participating in a defined contribution plan has a separate account, similar to a savings account, into which the employee and employer make contributions. The value of this account can be readily ascertained at any time by simply looking at the account.

Hatteberg v. Hatteberg, 933 S.W.2d 522 (Tex. App.—Houston [1st Dist.] 1994, no writ). Employee benefits earned before marriage and after divorce are separate property.

RESOURCES

Wendy S. Burgower & Sara Springer Valentine, *Characterization & Tracing: A New Spin on an Old Topic*, Marriage Dissolution (2011).

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Kathryn J. Murphy, *Characterization*, Adv. Fam. L. (2016).

Richard R. Orsinger, *Troubling Issues of Characterization, Reimbursement, Valuation, and Division Upon Divorce*, Adv. Fam. L. (2010).

Sec. 3.008. PROPERTY INTEREST IN CERTAIN INSURANCE PROCEEDS

(a) Insurance proceeds paid or payable that arise from a casualty loss to property during marriage are characterized in the same manner as the property to which the claim is attributable.

(b) If a person becomes disabled or is injured, any disability insurance payment or workers' compensation payment is community property to the extent it is intended to replace earnings lost while the disabled or injured person is married. To the extent that any insurance payment or workers' compensation payment is intended to replace earnings while the disabled or injured person is not married, the recovery is the separate property of the disabled or injured spouse.

Added by Acts 2005, 79th Leg., Ch. 490 (H.B. 410), Sec. 1, eff. September 1, 2005.

COMMENTS

This section resolves the conflict existing when, for example, a spouse uses community property to purchase a casualty policy that insures separate property. Under this section, in the event of a loss, the insurance proceeds follow the characterization of the lost or damaged property. The characterization of the money used to purchase the casualty policy does not control the characterization of proceeds following loss.

ANNOTATIONS

In re Bradshaw, 487 S.W.3d 306 (Tex. App.—Texarkana 2016), *rev'd on other grounds sub nom. Bradshaw v. Bradshaw*, 555 S.W.3d 539 (Tex. 2018). The character of insurance proceeds follows the character of the property insured. However, when a portion of the insurance proceeds is separate property and a portion is community property, if the proponent of the separate property claim fails to introduce evidence apportioning the two portions, the entire insurance proceeds are community property.

Burgess v. Burgess, No. 09-06-301-CV, 2007 WL 1501117 (Tex. App.—Beaumont May 24, 2007, no pet.) (mem. op.). The proceeds of a casualty insurance policy take their character from the property that is insured. Hence, the proceeds of a policy insuring separate property are separate property, while the proceeds of a policy insuring community property are community property. If a policy insures both community and separate property, the proceeds of the policy must be apportioned between the community and separate estates.

Sooy v. Sooy, No. 04-06-00509-CV, 2007 WL 516259 (Tex. App.—San Antonio Feb. 21, 2007, no pet.) (mem. op.). A workers' compensation payment intended to replace earnings lost during a claimant spouse's marriage is community property. Additionally, any workers' compensation a spouse receives is characterized in the same manner as the income being replaced, regardless of when the claim was filed.

RESOURCES

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Kathryn J. Murphy, *Characterization*, Adv. Fam. L. (2016).

SUBCHAPTER B. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY

Sec. 3.101. MANAGING SEPARATE PROPERTY

Each spouse has the sole management, control, and disposition of that spouse's separate property.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

RESOURCES

Charles E. Hardy & Kelly Koch, *Analyzing Your Property Case: A Prequel to Characterization, Valuation and Division of the Marital Estate*, Adv. Fam. L. (2009).

Sec. 3.102. MANAGING COMMUNITY PROPERTY

(a) During marriage, each spouse has the sole management, control, and disposition of the community property that the spouse would have owned if single, including:

(1) personal earnings;

(2) revenue from separate property;

(3) recoveries for personal injuries; and

(4) the increase and mutations of, and the revenue from, all property subject to the spouse's sole management, control, and disposition.

(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney in writing or other agreement.

(c) Except as provided by Subsection (a), community property is subject to the joint management, control, and disposition of the spouses unless the spouses provide otherwise by power of attorney in writing or other agreement.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Generally, to convey jointly managed community property, both spouses must join in the transaction. However, a substantial caveat exists with respect to this rule. This section creates an important exception for the protection of innocent third parties who deal with only one spouse.

ANNOTATIONS

Douglas v. Delp, 987 S.W.2d 879 (Tex. 1999). Texas recognizes both sole- and joint-management community property. Sole-management community property is community property that, although acquired during marriage, would have belonged to the acquiring spouse if single.

Yamin v. Carroll Wayne Conn, L.P., ___ S.W.3d ___, No. 14-16-00715-CV, 2018 WL 6722669 (Tex. App.—Houston [14th Dist.] Dec. 21, 2018, pet. filed) (citations omitted). "Certain community property, referred to as 'special community property,' is treated similarly to separate property. Special community property is the community property that is subject to one spouse's sole management, control, and disposition."

City of Emory v. Lusk, 278 S.W.3d 77 (Tex. App.—Tyler 2009, no pet.). One spouse, acting alone, cannot encumber joint-management community property. Both spouses must consent to encumber joint-management community property.

Jean v. Tyson-Jean, 118 S.W.3d 1 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). To effectuate a valid conveyance of joint-management community property, both spouses must necessarily join in the transaction.

RESOURCES

Charles E. Hardy & Kelly Koch, *Analyzing Your Property Case: A Prequel to Characterization, Valuation and Division of the Marital Estate*, Adv. Fam. L. (2009).

Sec. 3.103. MANAGING EARNINGS OF MINOR

Except as provided by Section 264.0111, during the marriage of the parents of an unemancipated minor for whom a managing conservator has not been appointed, the earnings of the minor are subject to the joint management, control, and disposition of the parents of the minor, unless otherwise provided by agreement of the parents or by judicial order.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 964, Sec. 1, eff. Sept. 1, 2001.

ANNOTATIONS

Insurance Co. of Texas v. Stratton, 287 S.W.2d 320 (Tex. Civ. App.—Waco 1956, writ ref'd n.r.e.). The earnings of an unemancipated minor, as well as any property that might be purchased with proceeds derived from such earnings, belong to and become a part of the parents' community estate.

RESOURCES

Rick Robertson & Rebecca L. Armstrong, *Conservatorship Basics*, Marriage Dissolution 101 (2011).

Sec. 3.104. PROTECTION OF THIRD PERSONS

(a) During marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in that spouse's name, as shown by muniment, contract, deposit of funds, or other evidence of ownership, or if it is in that spouse's possession and is not subject to such evidence of ownership.

(b) A third person dealing with a spouse is entitled to rely, as against the other spouse or anyone claiming from that spouse, on that spouse's authority to deal with the property if:

(1) the property is presumed to be subject to the sole management, control, and disposition of the spouse; and

(2) the person dealing with the spouse:

(A) is not a party to a fraud on the other spouse or another person; and

(B) does not have actual or constructive notice of the spouse's lack of authority.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

United States v. Tract 31A, Lots 31 & 32, Lafitte's Landing Phase Two Port Arthur, 852 F.3d 385 (5th Cir. 2017) (per curiam). Husband agreed to forfeit two annuities held solely in his name as part of a plea agreement in a criminal case. Wife claimed that the court erred in effectively ordering the forfeiture of her one-half community interest. The Fifth Circuit upheld the trial court, holding that the government was entitled to rely on the legal presumption that the annuities were husband's sole management community property because they were held solely in husband's name.

Jean v. Tyson-Jean, 118 S.W.3d 1 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). In general, most community property is subject to the joint management, control, and disposition of the spouses unless the spouses provide otherwise by power of attorney in writing or other agreement. However, when community property is held in one spouse's name only, a presumption arises that the property is sole-management community property. Therefore, this section controls over section 3.102 (sole-management community property rights) when the two sections conflict. Absent a showing of fraud or notice on the part of persons dealing with the named spouse, the sole-management presumption protects third parties who rely on the spouse's authority to deal with the property. To earn the right to rely on the presumption, a third party must show three things: (1) the property conveyed was presumed to be subject to the named spouse's sole management; (2) the grantee was not party to a fraud on the unnamed spouse; and (3) the grantee had no notice of any lack of authority of the named spouse to convey the property. If the third party offers evidence supporting these three elements, the burden shifts to the unnamed spouse to rebut the third party's presumption of entitlement. If the unnamed spouse successfully rebuts the presumption, it becomes the third party's burden to prove, by clear and convincing evidence, that the grantee was not a party to a fraud and that the grantee did not know the named spouse lacked authority.

RESOURCES

Charles E. Hardy & Kelly Koch, *Analyzing Your Property Case: A Prequel to Characterization, Valuation and Division of the Marital Estate*, Adv. Fam. L. (2009).

SUBCHAPTER C. MARITAL PROPERTY LIABILITIES

Sec. 3.201. SPOUSAL LIABILITY

(a) A person is personally liable for the acts of the person's spouse only if:

(1) the spouse acts as an agent for the person; or

(2) the spouse incurs a debt for necessaries as provided by Subchapter F, Chapter 2.

(b) Except as provided by this subchapter, community property is not subject to a liability that arises from an act of a spouse.

(c) A spouse does not act as an agent for the other spouse solely because of the marriage relationship.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Family law practitioners often speak of a "community liability." This term is a misnomer. As this section provides, when a spouse incurs a liability, that event does not create personal liability on behalf of the other spouse.

ANNOTATIONS

Gardner Aldrich, LLP v. Tedder, 421 S.W.3d 651 (Tex. 2013). A spouse's legal fees in a divorce proceeding are not necessaries. Further, this section does not subject one spouse to liability for the other spouse's debt.

Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975). Money borrowed during marriage is presumed to be community property unless a spouse proves that the creditor agreed to look solely to the separate estate of the contracting spouse for satisfaction. The fact that debts are incurred during marriage (community liabilities) does not, without more, lead to the conclusion that the liabilities are joint liabilities.

Bush v. Bush, 336 S.W.3d 722 (Tex. App.—Houston [1st Dist.] 2010, no pet.). This section sets forth the circumstances under which the acts of one spouse are imputed to the other spouse for purposes of liability to a third-party creditor. Section 3.202 addresses what portions of the spouses' assets a third-party creditor can reach after a court has assessed liability against one or both spouses. Neither statute addresses what debt a court may consider a debt of the community when making a just and right division of the community estate. Whether a spouse is liable to a third-

party creditor for the debt of the other spouse is an analysis separate from determining whether a court may consider the spouses' debts and liabilities when dividing the community estate.

Pollard v. Fine, No. 04-08-00745-CV, 2009 WL 2882941 (Tex. App.—San Antonio Sept. 9, 2009, pet. dism'd by agr.) (mem. op.). The relationship of principal and agent does not arise from the mere fact of the marital relationship. Further, the marital relationship does not raise a presumption of a principal-agent relationship. A person is personally liable for the acts of the person's spouse only if the spouse acts as an agent for the other spouse. Thus, facts and circumstances may be produced that would require a finding that a wife is bound by the agreement of her husband. Only if the facts are uncontroverted or otherwise established may the existence of an agency relationship be considered a pure question of law.

Hill v. Jarvis, No. 12-07-00091-CV, 2008 WL 2571753 (Tex. App.—Tyler June 30, 2008, pet. denied) (mem. op.). Ratification can occur when a principal, though he had no knowledge originally of the unauthorized act of his agent, retains the benefits of the transaction after acquiring full knowledge. The knowledge to support ratification may be shown by evidence either of knowledge or of facts from which such knowledge reasonably may be imputed to the principal.

Providian National Bank v. Ebarb, 180 S.W.3d 898 (Tex. App.—Beaumont 2005, no pet.). This section and section 3.202 relate to two distinct liability concepts. This section governs a spouse's personal liability for the acts of the other spouse, while section 3.202 sets out the rules of marital property liability.

RESOURCES

Charles E. Hardy & Kelly Koch, *Analyzing Your Property Case: A Prequel to Characterization, Valuation and Division of the Marital Estate*, Adv. Fam. L. (2009).

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Sec. 3.202. RULES OF MARITAL PROPERTY LIABILITY

(a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse's sole management, control, and disposition is not subject to:

(1) any liabilities that the other spouse incurred before marriage; or

(2) any nontortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by the spouse before or during marriage.

(d) All community property is subject to tortious liability of either spouse incurred during marriage.

(e) For purposes of this section, all retirement allowances, annuities, accumulated contributions, optional benefits, and money in the various public retirement system accounts of this state that are community property subject to the participating spouse's sole management, control, and disposition are not subject to any claim for payment of a criminal restitution judgment entered against the nonparticipant spouse except to the extent of the nonparticipant spouse's interest as determined in a qualified domestic relations order under Chapter 804, Government Code.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1244 (S.B. 2324), Sec. 1, eff. September 1, 2009.

COMMENTS

This section lists the specific categories of property that a creditor may reach in satisfaction of different types of claims against a spouse. Case law allows a creditor to reach a former spouse's property after divorce to satisfy a debt incurred during marriage if the creditor could have reached that property before divorce.

ANNOTATIONS

Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975). Debts contracted during marriage are presumed to be based on community credit.

Drake Interiors, L.L.C. v. Thomas, 433 S.W.3d 841 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). A premarital creditor may reach the sole management community property of the debtor, or the joint management community property of both spouses in a subsequent marriage, irrespective of whether the non-liable spouse is joined in the debt proceeding.

Beal Bank v. Gilbert, 417 S.W.3d 704 (Tex. App.—Dallas 2013, no pet.). Interest or dividends paid on wife's separate property are wife's sole-management community property, and a third-party judgment creditor could not collect from wife's sole-management community property to pay the husband's nontortuous liabilities.

Bush v. Bush, 336 S.W.3d 722 (Tex. App.—Houston [1st Dist.] 2010, no pet.). This section sets forth what portions of the spouses' assets a third-party creditor can reach after a court has assessed liability against one or both spouses. Section 3.201 addresses the circumstances under which the acts of one spouse are imputed to the other spouse for purposes of liability to a third-party creditor. Neither statute addresses what debt a court may consider a debt of the community when making a just and right division of the community estate. Whether a spouse is liable to a third-party creditor for the debt of the other spouse is an analysis separate from determining whether a court may consider the spouses' debts and liabilities when dividing the community estate.

Providian National Bank v. Ebarb, 180 S.W.3d 898 (Tex. App.—Beaumont 2005, no pet.). This section and section 3.201 relate to two distinct liability concepts. This section sets out the rules of marital property liability, while section 3.201 governs a spouse's personal liability for the acts of the other spouse.

Patel v. Kuciemba, 82 S.W.3d 589 (Tex. App.—Corpus Christi 2002, pet. denied). Community property over which a spouse has the sole management, control, and disposition is known as special community property. Special community property is that portion of the community estate that is under one spouse's exclusive control and is not liable for the other spouse's debts.

RESOURCES

Charles E. Hardy & Kelly Koch, *Analyzing Your Property Case: A Prequel to Characterization, Valuation and Division of the Marital Estate*, Adv. Fam. L. (2009).

Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham & T. Hunter Lewis, *Characterization & Tracing: An Overview*, Adv. Fam. L. (2011).

Sec. 3.203. ORDER IN WHICH PROPERTY IS SUBJECT TO EXECUTION

(a) A judge may determine, as deemed just and equitable, the order in which particular separate or community property is subject to execution and sale to satisfy a judgment, if the property subject to liability for a judgment includes any combination of:

(1) a spouse's separate property;

(2) community property subject to a spouse's sole management, control, and disposition;

(3) community property subject to the other spouse's sole management, control, and disposition; and

(4) community property subject to the spouses' joint management, control, and disposition.

(b) In determining the order in which particular property is subject to execution and sale, the judge shall consider the facts surrounding the transaction or occurrence on which the suit is based.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Estate of Fulmer v. Commissioner of Internal Revenue, 83 T.C. 302 (1984). This section (formerly section 5.62) is a marshaling statute and is wholly consistent with subsection 3.202(d) (formerly subsection 5.61(d)). Under subsection 3.202(d), the community property of both spouses is subject to the tortious liability of either spouse incurred during marriage. This section provides only that a court may, as equitable considerations require, determine the order in which property is to be used to satisfy a judgment against one of the spouses.

RESOURCES

Charles E. Hardy & Kelly Koch, *Analyzing Your Property Case: A Prequel to Characterization, Valuation and Division of the Marital Estate*, Adv. Fam. L. (2009).

SUBCHAPTER D. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY UNDER UNUSUAL CIRCUMSTANCES

Sec. 3.301. MISSING, ABANDONED, OR SEPARATED SPOUSE

(a) A spouse may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property described or defined in the petition that would otherwise be subject to the sole or joint management, control, and disposition of the other spouse if:

(1) the other spouse has disappeared and that spouse's location remains unknown to the petitioning spouse, unless the spouse is reported to be a prisoner of war or missing on public service;

(2) the other spouse has permanently abandoned the petitioning spouse; or

(3) the spouses are permanently separated.

(b) The petition may be filed in a court in the county in which the petitioner resided at the time the separation began, or the abandonment or disappearance occurred, not earlier than the 60th day after the date of the occurrence of the event. If both spouses are nonresidents of this state at the time the petition is filed, the petition may be filed in a court in a county in which any part of the described or defined community property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 23, eff. Sept. 1, 2001.

RESOURCES

Jolene Wilson-Glah & Bonnie Crane Hellums, *Time is of the Essence: Required Deadlines and Procedural Timelines in Handling a Family Law Case*, Adv. Fam. L. (2009).

Sec. 3.302. SPOUSE MISSING ON PUBLIC SERVICE

(a) If a spouse is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, the spouse of the prisoner of war or missing person may file a sworn petition stating the facts that make it desirable for the petitioner to manage, control, and dispose of the community property described or defined in the petition that would otherwise be subject to the sole or joint management, control, and disposition of the imprisoned or missing spouse.

(b) The petition may be filed in a court in the county in which the petitioner resided at the time the report was made not earlier than six months after the date of the notice that a spouse is reported to be a prisoner of war or missing on public service. If both spouses were nonresidents of this state at the time the report was made, the petition shall be filed in a court in a county in which any part of the described or defined property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

RESOURCES

Jolene Wilson-Glah & Bonnie Crane Hellums, *Time is of the Essence: Required Deadlines and Procedural Timelines in Handling a Family Law Case*, Adv. Fam. L. (2009).

Sec. 3.303. APPOINTMENT OF ATTORNEY

(a) Except as provided by Subsection (b), the court may appoint an attorney in a suit filed under this subchapter for the respondent.

(b) The court shall appoint an attorney in a suit filed under this subchapter for a respondent reported to be a prisoner of war or missing on public service.

(c) The court shall allow a reasonable fee for an appointed attorney's services as a part of the costs of the suit.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.304. NOTICE OF HEARING; CITATION

(a) Notice of the hearing, accompanied by a copy of the petition, shall be issued and served on the attorney representing the respondent, if an attorney has been appointed.

(b) If an attorney has not been appointed for the respondent, citation shall be issued and served on the respondent as in other civil cases.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.305. CITATION BY PUBLICATION

(a) ~~If~~ **Except as provided by Section 17.032, Civil Practice and Remedies Code, if** the residence of the respondent, other than a respondent reported to be a prisoner of war or missing on public service, is unknown, citation shall be published **on the public information Internet website maintained as required by Section 72.034, Government Code, and** in a newspaper of general circulation published in the county in which the petition was filed. ~~If that county has no newspaper of general circulation, citation shall be published in a newspaper of general circulation in an adjacent county or in the nearest county in which a newspaper of general circulation is published.~~

(b) The notice shall be published **on the public information Internet website for at least two consecutive weeks before the hearing and in a newspaper** once a week for two consecutive weeks before the hearing. **Neither** ~~, but the first~~ notice may ~~not~~ be **initially** published after the 20th day before the date set for the hearing.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2019, 86th Leg., S.B. 891, Sec. 10.09, eff. Sept. 1, 2019.

Section 15.05 of Acts 2019, 86th Leg., S.B. 891 states—

"The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, implement a provision of this Act using other appropriations available for that purpose."

RESOURCES

Stephen M. Orsinger, *Service of Citation, Default Judgments & Remedial Measures*, Assoc. Judges Program (2012).

Sec. 3.306. COURT ORDER FOR MANAGEMENT, CONTROL, AND DISPOSITION OF COMMUNITY PROPERTY

(a) After hearing the evidence in a suit under this subchapter, the court, on terms the court considers just and equitable, shall render an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage.

(b) The court may:

(1) impose any condition and restriction the court deems necessary to protect the rights of the respondent;

(2) require a bond conditioned on the faithful administration of the property; and

(3) require payment to the registry of the court of all or a portion of the proceeds of the sale of the property, to be disbursed in accordance with the court's further directions.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.307. CONTINUING JURISDICTION OF COURT; VACATING ORIGINAL ORDER

(a) The court has continuing jurisdiction over the court's order rendered under this subchapter.

(b) On the motion of either spouse, the court shall amend or vacate the original order after notice and hearing if:

(1) the spouse who disappeared reappears;

(2) the abandonment or permanent separation ends; or

(3) the spouse who was reported to be a prisoner of war or missing on public service returns.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 24, eff. Sept. 1, 2001.

Sec. 3.308. RECORDING ORDER TO AFFECT REAL PROPERTY

An order authorized by this subchapter affecting real property is not constructive notice to a good faith purchaser for value or to a creditor without actual notice unless the order is recorded in the deed records of the county in which the real property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 3.309. REMEDIES CUMULATIVE

The remedies provided in this subchapter are cumulative of other rights, powers, and remedies afforded spouses by law.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER E. CLAIMS FOR REIMBURSEMENT

Sec. 3.401. DEFINITIONS

In this subchapter:

(1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(2), eff. September 1, 2009.

(2) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(2), eff. September 1, 2009.

(3) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(2), eff. September 1, 2009.

(4) "Marital estate" means one of three estates:

(A) the community property owned by the spouses together and referred to as the community marital estate;

(B) the separate property owned individually by the husband and referred to as a separate marital estate; or

(C) the separate property owned individually by the wife, also referred to as a separate marital estate.

(5) "Spouse" means a husband, who is a man, or a wife, who is a woman. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 11(2), eff. September 1, 2009.

RESOURCES

Michael P. Geary, *Reimbursement: Statutory and Common Law Recoveries*, New Frontiers in Marital Prop. (2010).

Richard R. Orsinger, *Troubling Issues of Characterization, Reimbursement, Valuation, and Division Upon Divorce*, Adv. Fam. L. (2010).

Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS

(a) For purposes of this subchapter, a claim for reimbursement includes:

(1) payment by one marital estate of the unsecured liabilities of another marital estate;

(2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse;

(3) the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage;

(4) the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed at the time the property was received;

(5) the reduction of the principal amount of that part of a debt, including a home equity loan:

(A) incurred during a marriage;

(B) secured by a lien on property; and

(C) incurred for the acquisition of, or for capital improvements to, property;

(6) the reduction of the principal amount of that part of a debt:

(A) incurred during a marriage;

(B) secured by a lien on property owned by a spouse;

(C) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and

(D) incurred for the acquisition of, or for capital improvements to, property;

(7) the refinancing of the principal amount described by Subdivisions (3)–(6), to the extent the refinancing reduces that principal amount in a manner described by the applicable subdivision;

(8) capital improvements to property other than by incurring debt; and

(9) the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses.

(b) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

(c) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate, except that the separate estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate.

(d) Reimbursement for funds expended by a marital estate for improvements to another marital estate shall be measured by the enhancement in value to the benefited marital estate.

(e) The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 3, eff. September 1, 2009.

COMMENTS

During its 1999 and 2001 legislative sessions, the Texas legislature enacted a statutory scheme creating a claim for "economic contribution." In 2009, the legislature repealed the entire economic-contribution statutory scheme. In that same year, the legislature amended this section to recognize additional categories of reimbursement claims.

Subsection 3.402(c) expressly precludes a separate property estate from asserting an offset for the use and enjoyment of property against a claim for reimbursement brought by the community estate with respect to a primary or secondary residence. In other words, if a spouse purchases a residence before marriage and, during the marriage, the spouses live in that residence and reduce the indebtedness against that residence, the use and enjoyment of the separate-property residence cannot be asserted as an offset to a claim by the community estate for reimbursement of, for example, monies used to reduce the mortgage indebtedness.

In addition, note that pursuant to subsections 3.402(a)(1) and 3.402(a)(9), interest payments appear to be included within the scope of the reimbursement claim with regard to unsecured liabilities. Under subsections 3.402(a)(3), (4), (5), (6), and (7), however, which relate to secured liabilities, this section provides that the amount of the claim is restricted to the actual reduction in principal. A question exists about whether common-law reimbursement could provide a reimbursement claim for interest on such secured obligations.

ANNOTATIONS

Jensen v. Jensen, 665 S.W.2d 107 (Tex. 1984). Specificity in a reimbursement pleading is apparently not required.

Vallone v. Vallone, 644 S.W.2d 455 (Tex. 1982). When separate property is combined with community time, talent, and labor, and both the community and the separate estate make claim upon the incremental increase in value, the courts are confronted with conflicting principles of marital property law. It is fundamental that any property or rights acquired by one of the spouses after marriage by toil, talent, industry, or other productive faculty belongs to the community estate. Nevertheless, the law contemplates that a spouse may expend a reasonable amount of talent or labor in the management and preservation of the spouse's separate estate without impressing a community character upon that estate.

In re Marriage of McCoy & Els, 488 S.W.3d 430 (Tex. App.—Houston [14th Dist.] 2016, no pet.). In order to support a reimbursement claim, evidence must establish the enhanced value that resulted from the related capital improvements themselves.

Bigelow v. Stephens, 286 S.W.3d 619 (Tex. App.—Beaumont 2009, no pet.). The categories of reimbursement set forth in former subsection 3.402(b) are not exhaustive (interpreting a prior version of this subsection).

Moroch v. Collins, 174 S.W.3d 849 (Tex. App.—Dallas 2005, pet. denied). A marital property agreement that waives and releases each spouse's present and future claims for reimbursement against the other's separate estate does not necessarily waive and release reimbursement claims against the community estate.

RESOURCES

Michael P. Geary, *Reimbursement: Statutory and Common Law Recoveries*, New Frontiers in Marital Prop. (2010).

Richard R. Orsinger, *Troubling Issues of Characterization, Reimbursement, Valuation, and Division Upon Divorce*, Adv. Fam. L. (2010).

Sec. 3.404. APPLICATION OF INCEPTION OF TITLE RULE; OWNERSHIP INTEREST NOT CREATED

(a) This subchapter does not affect the rule of inception of title under which the character of property is determined at the time the right to own or claim the property arises.

(b) A claim for reimbursement under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the contributing estate. The claim matures on dissolution of the marriage or the death of either spouse.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 4, eff. September 1, 2009.

COMMENTS

This section makes clear that a reimbursement claim does not alter ownership interest or title. Rather, a reimbursement claim is a monetary claim.

ANNOTATIONS

Vallone v. Vallone, 644 S.W.2d 455 (Tex. 1982). A reimbursement claim is not an interest in property or an enforceable debt, per se, but an equitable right that arises upon dissolution of the marriage through death, divorce, or annulment.

RESOURCES

Michael P. Geary, *Reimbursement: Statutory and Common Law Recoveries*, New Frontiers in Marital Prop. (2010).

Sec. 3.405. MANAGEMENT RIGHTS

This subchapter does not affect the right to manage, control, or dispose of marital property as provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001.

Sec. 3.406. EQUITABLE LIEN

(a) On dissolution of a marriage, the court may impose an equitable lien on the property of a benefited marital estate to secure a claim for reimbursement against that property by a contributing marital estate.

(b) On the death of a spouse, a court may, on application for a claim for reimbursement brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Chapter 22, Estates Code, impose an equitable lien on the property of a benefited marital estate to secure a claim for reimbursement against that property by a contributing marital estate.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 768, Sec. 11(4), eff. September 1, 2009.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001. Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 5, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 11(4), eff. September 1, 2009. Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.013, eff. Sept. 1, 2017.

COMMENTS

This section makes clear that a court has the authority to secure a reimbursement award by a lien against the benefited estate, including a separate estate. Liens securing a reimbursement claim are permissible only against the specific property to which improvement was made at the expense of another estate.

ANNOTATIONS

Heggen v. Pemelton, 836 S.W.2d 145 (Tex. 1992). When dividing martial property in a divorce, a court may impose a suitable equitable lien on one party's property, even a separate property homestead, to secure the other spouse's right of reimbursement for improvements to that property.

Hinton v. Burns, 433 S.W.3d 189 (Tex. App.—Dallas 2014, no pet.). A trial court may not impose an equitable lien against a separate property homestead if the equitable lien does not fall within any of the allowed categories under the Texas Constitution. Further, a trial court may not impose an equitable lien against a party's separate property estate in the absence of evidence that the separate property estate was benefited by the contribution.

Young v. Young, 168 S.W.3d 276 (Tex. App.—Dallas 2005, no pet.). A court may impose an equitable lien on property to secure an obligation to pay a monetary award in consideration of relinquishment of an interest in the community estate. In other words, a court may order an equitable lien to secure an owelty judgment or an equalization payment. The court may impose this lien against community assets.

In re Marriage of Royal, 107 S.W.3d 846 (Tex. App.—Amarillo 2003, no pet.). There is no authority for the proposition that a separate property reimbursement interest must be recovered before any sale costs. An equitable lien authorized by the Family Code is just that, a lien. It is not a property interest, separate or otherwise. The legislature

specifically provided that the subchapter authorizing equitable liens for economic contribution did not create a property interest.

Smith v. Smith, 715 S.W.2d 154 (Tex. App.—Texarkana 1986, no writ). Liens securing community reimbursement claims are permissible only against the specific separate property to which improvement was made at community expense.

Day v. Day, 610 S.W.2d 195 (Tex. Civ. App.—Tyler 1980, writ dism'd w.o.j.). An equitable lien is rooted in equity; it does not owe its existence to any statute. An equitable lien stands independent of any statute, at least with respect to the parties to the judgment. An equitable lien is distinguished from a judgment lien. A judgment lien exists only by virtue of a statute and is, therefore, created only by compliance with the law governing such liens. Thus, before a money judgment can ripen into a judgment lien, the judgment creditor must abstract the judgment and must record and index the judgment in the proper county.

RESOURCES

Larry L. Martin, *Securing Agreements and Judgments*, Adv. Fam. L. (2011).

Sec. 3.409. NONREIMBURSABLE CLAIMS

The court may not recognize a marital estate's claim for reimbursement for:

(1) the payment of child support, alimony, or spousal maintenance;

(2) the living expenses of a spouse or child of a spouse;

(3) contributions of property of a nominal value;

(4) the payment of a liability of a nominal amount; or

(5) a student loan owed by a spouse.

Added by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001.

ANNOTATIONS

Witte v. Witte, No. 14-05-00768-CV, 2008 WL 451717 (Tex. App.—Houston [14th Dist.] Feb. 21, 2008, pet. struck). A court may award a disproportionate amount of community property to a spouse in the amount that the other spouse paid as child support for the child of a prior marriage and also in the amount of the community property the other spouse used to pay his or her own living expenses before and during divorce proceedings. Such an award is not permissible as a reimbursement claim, but it is permissible when made as part of a just and right division of the community estate.

RESOURCES

Michael P. Geary, *Reimbursement: Statutory and Common Law Recoveries*, New Frontiers in Marital Prop. (2010).

Sec. 3.410. EFFECT OF MARITAL PROPERTY AGREEMENTS

A premarital or marital property agreement, whether executed before, on, or after September 1, 2009, that satisfies the requirements of Chapter 4 is effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both, under this subchapter to the same extent the agreement would have been effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both under the law as it existed immediately before September 1, 2009, unless the agreement provides otherwise.

Added by Acts 2001, 77th Leg., ch. 838, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 6, eff. September 1, 2009.

ANNOTATIONS

Stoker v. Stoker, No. 01-07-00056-CV, 2008 WL 4837084 (Tex. App.—Houston [1st Dist.] Nov. 6, 2008, no pet.) (mem. op.). Under this section, a provision in a marital property agreement that waives reimbursement claims also waives economic-contribution claims.

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SUBCHAPTER A. UNIFORM PREMARITAL AGREEMENT ACT

Sec. 4.001. DEFINITIONS

In this subchapter:

(a) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage.

(b) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

The agreement referenced in this section applies only to parties who intend to be married. It does not apply to parties who are living together but who are not contemplating marriage. Additionally, the property definition is intended to apply to all forms of property interests, including income from property interests and personal services income.

ANNOTATIONS

Beck v. Beck, 814 S.W.2d 745, 749 (Tex. 1991). The Texas Supreme Court concluded that the 1980 amendment to Tex. Const. art. XVI, § 15, "demonstrates an intention" to authorize future premarital agreements. Further, the 1980 amendment impliedly validated premarital agreements that were executed before the 1980 amendment. The court also stated that the Texas legislature intended to establish a public policy that premarital agreements should be enforced.

Williams v. Williams, 569 S.W.2d 867, 870 (Tex. 1978). Courts should construe this section (formerly section 5.41) broadly to allow parties contemplating marriage the flexibility to contract with regard to their property and other rights incident to the marriage relationship.

Ahmed v. Ahmed, 261 S.W.3d 190, 194 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Trial court erred when it enforced an Islamic Mahr agreement as a premarital agreement because, although the parties executed the Mahr agreement before their religious wedding ceremony, the agreement was executed after a valid civil wedding ceremony.

Winger v. Pianka, 831 S.W.2d 853, 857–58 (Tex. App.—Austin 1992, writ denied). Persons about to marry may partition future property such as salaries, income, or earnings.

Sec. 4.002. FORMALITIES

A premarital agreement must be in writing and signed by both parties. The agreement is enforceable without consideration.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

A premarital agreement need not be signed by the two parties at the same time or on the same day. It must, however, be executed completely before the marriage.

Sec. 4.003. CONTENT

(a) The parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) the disposition of property on separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the modification or elimination of spousal support;

(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) the ownership rights in and disposition of the death benefit from a life insurance policy;

(7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section permits parties to enter into a premarital agreement regarding any of the matters listed and any other matter that is not in violation of public policy or which by statute may impose a criminal penalty. The listed matters are not exclusive but are illustrations of what the contract may contain. However, a premarital agreement may not adversely affect the right of a child to support.

ANNOTATIONS

Beck v. Beck, 814 S.W.2d 745, 749 (Tex. 1991). A premarital agreement may recharacterize community property as separate property.

Williams v. Williams, 569 S.W.2d 867, 870 (Tex. 1978). A premarital agreement may allow a spouse to waive homestead and other similar rights.

Winger v. Pianka, 831 S.W.2d 853, 857–58 (Tex. App.—Austin 1992, writ denied). Persons about to marry may partition or exchange between themselves salaries and earnings to be acquired by the parties during their future marriage.

RESOURCES

Katherine A. Kinser & Jonathan Bates, *Premarital & Marital Property Agreements: As God is My Witness, I'll Never Go Hungry Again*, Adv. Fam. L. (2008).

Sec. 4.004. EFFECT OF MARRIAGE

A premarital agreement becomes effective on marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

In re Ja.D.Y., No. 05-16-01412-CV, 2018 WL 3424359 (Tex. App.—Dallas July 16, 2018, no pet.) (mem. op.). When a marriage is annulled, it is as if the marriage never occurred, and any premarital agreement is unenforceable because it never went into effect.

Ahmed v. Ahmed, 261 S.W.3d 190, 194 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Trial court erred when it enforced an Islamic marriage contract signed after a civil ceremony, but prior to a religious ceremony, as a premarital contract because the parties were already spouses and not prospective spouses.

Marshall v. Marshall, 735 S.W.2d 587, 590 (Tex. App.—Dallas 1987, writ ref'd n.r.e.). A premarital agreement executed before the parties' first marriage was valid and enforceable only as it related to the first marriage. It did not apply to the parties' remarriage or to the assets acquired during the second marriage.

Sec. 4.005. AMENDMENT OR REVOCATION

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Paul v. Merrill Lynch Trust Co., 183 S.W.3d 805 (Tex. App.—Waco 2005, no pet.). A premarital agreement cannot be revoked by a will unless the will fulfills the appropriate statutory requirements by the will.

Sec. 4.006. ENFORCEMENT

(a) A premarital agreement is not enforceable if the party against whom enforcement is requested proves that:

(1) the party did not sign the agreement voluntarily; or

(2) the agreement was unconscionable when it was signed and, before signing the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

A premarital agreement is presumed to be enforceable. The burden of proof is on the party challenging enforceability. A written waiver of the right to additional disclosure should be in a separate document. Further, the written waiver should be signed before the premarital agreement. This may be evidenced by a time stamp or by written notation regarding the time of signing. It is a good practice to have the parties sign a ratification of the agreement within thirty days of the marriage. While a failure to do so is not fatal as to overall enforceability, it will result in provisions of an agreement covered by several federal statutes being found unenforceable and may result in a finding that income from separate property is community property, regardless of the terms of the agreement.

ANNOTATIONS

In re I.C., 551 S.W.3d 119 (Tex. 2018) (Lehrmann, J., concurring). Section 4.006 provides the exclusive means of rendering a premarital agreement unenforceable. As such, it forecloses rescission as a potential remedy with respect to premarital agreements.

In re Marriage of Lehman, No. 14-17-00042-CV, 2018 WL 3151172, at *2 (Tex. App.—Houston [14th Dist.] June 28, 2018, no pet.) (mem. op.). The Family Code does not define "voluntarily." "[C]ourts have construed 'voluntarily' to mean an action that is taken intentionally or by the free exercise of one's will. [Factors to consider include] (1) whether a party has had the advice of counsel, (2) misrepresentations made in procuring the agreement, (3) the amount of information shared, and (4) whether information has been withheld."

Moore v. Moore, 383 S.W.3d 190 (Tex. App.—Dallas 2012, pet. denied). A party seeking to show that a premarital agreement was signed involuntarily is not required to prove "an express direct threat or coercion" to establish involuntariness. The Family Code expressly provides that a premarital agreement is not enforceable if it is not voluntarily signed. A husband could not prevent a wife from showing involuntariness by including recitations in the very agreement that the wife alleges was not voluntarily signed.

Sheshunoff v. Sheshunoff, 172 S.W.3d 686 (Tex. App.—Austin 2005, pet. denied). In shifting the burden of proof to the party opposing enforcement, the Texas Legislature manifested a strong policy preference that marital property agreements should be enforced. Although the case deals with a postmarital agreement, the analysis is also appropriate for premarital agreements. The Family Code sets forth the exclusive remedies available to prevent enforcement of a marital property agreement. Although common law defenses "may inform our analysis of 'voluntariness,' they will not necessarily control."

Osorno v. Osorno, 76 S.W.3d 509 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Each party to a proposed premarital agreement has the right to refuse to marry if the other party refuses to sign a premarital agreement. There is no legal duty to marry another party, even if the woman is pregnant. The fact that the proposed wife was pregnant at the time the parties signed the agreement, and that she might have felt moral pressure to enter into the marriage relationship, did not satisfy the test that the woman entered into the agreement involuntarily.

Marsh v. Marsh, 949 S.W.2d 734 (Tex. App.—Houston [14th Dist.] 1997, no writ). Neither the legislature nor the courts have defined the term "unconscionable." A court may consider several factors in determining whether an agreement is unconscionable, including the parties' educational levels, maturity, experiences in prior marriages, and their motivations. The length of time prior to the wedding that the parties signed an agreement, or the fact that one party had no legal counsel, do not, standing alone, make the agreement unconscionable.

RESOURCES

Diana S. Friedman & Lon M. Loveless, *Family Law Contracts: Pre and Post Marital Agreements; Divorce Decrees; AIDS; Application of Transactional Contract and Related Law; Enforcement, Breach, and Contractual Defenses*, Adv. Fam. L. (2009).

Diana S. Friedman & Lon M. Loveless, *Premarital and Post-Marital Agreements with Ethical Considerations*, Marriage Dissolution (2009).

Katherine A. Kinser & Jonathan J. Bates, *Cohabitation, Domestic Partnership, Premarital & Post-Marital Property Agreements*, Adv. Fam. L. (2010).

Sec. 4.007. ENFORCEMENT: VOID MARRIAGE

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section provides a court with an avenue of enforcement of a premarital agreement even if the parties' marriage is void. This takes into account equitable situations in which a party may have relied on in the premarital agreement even though not validly married.

Sec. 4.008. LIMITATION OF ACTIONS

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Tolling of the statute of limitations is intended to avoid litigation over a premarital agreement during the parties' marriage.

ANNOTATIONS

Fazakerly v. Fazakerly, 996 S.W.2d 260 (Tex. App.—Eastland 1999, pet. denied). The court of appeals reviewed the application of limitations in the context of a premarital agreement and held that a wife's claim seeking a declaratory judgment that the premarital agreement was void was barred by laches.

RESOURCES

Stephen M. Orsinger, *Drafting Enforceable Pre- and Post-Nuptial Agreements: Foreclosing Defenses & Employing Construction*, Adv. Fam. L. Drafting (2011).

Sec. 4.009. APPLICATION AND CONSTRUCTION

This subchapter shall be applied and construed to effect its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting these provisions.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.010. SHORT TITLE

This subchapter may be cited as the Uniform Premarital Agreement Act.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER B. MARITAL PROPERTY AGREEMENT

Sec. 4.101. DEFINITION

In this subchapter, "property" has the meaning assigned by Section 4.001.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.102. PARTITION OR EXCHANGE OF COMMUNITY PROPERTY

At any time, the spouses may partition or exchange between themselves all or part of their community property, then existing or to be acquired, as the spouses may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes that spouse's separate property. The partition or exchange of property may also provide that future earnings and income arising from the transferred property shall be the separate property of the owning spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2003, 78th Leg., ch. 230, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 477 (H.B. 202), Sec. 1, eff. September 1, 2005.

COMMENTS

Because of amendments to this section in 2003 and again in 2005, partition and exchange agreements executed between September 1, 2003, and August 31, 2005, automatically include future earnings and income from the partitioned property unless the spouses agree in a record that the future earnings and income would be community property after the partition or exchange.

ANNOTATIONS

Ahmed v. Ahmed, 261 S.W.3d 190, 195 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Partition and exchange agreements under this section require the spouses to intend to convert community property into separate property.

McClary v. Thompson, 65 S.W.3d 829, 837 (Tex. App.—Fort Worth 2002, pet. denied). If there are no provisions in a partition and exchange agreement that specifically address the characterization of future wages, time, toil, or talent, then the agreement does not convert the parties' income into separate property.

RESOURCES

Barbara D. Nunneley, *Pre- and Post-Nuptials*, Adv. Fam. L. (2011).

Sec. 4.103. AGREEMENT BETWEEN SPOUSES CONCERNING INCOME OR PROPERTY FROM SEPARATE PROPERTY

At any time, the spouses may agree that the income or property arising from the separate property that is then owned by one of them, or that may thereafter be acquired, shall be the separate property of the owner.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Jurek v. Couch-Jurek, 296 S.W.3d 864, 875 (Tex. App.—El Paso 2009, no pet.). When read as a whole with the Family Code, the Texas Constitution allows prospective spouses as well as spouses to enter into written instruments to partition their property or exchange their community interests in property. Further, spouses, but not prospective spouses, may enter into written agreements recharacterizing income or property from separate property as separate property.

Pearce v. Pearce, 824 S.W.2d 195, 197–98 (Tex. App.—El Paso 1991, writ denied). A couple that entered into a trust indenture shortly after their marriage thereby created a "postnuptial agreement" in which the parties agreed that the husband's separate property would remain separate and that any and all increases and income from his separate property would constitute part of his separate estate.

Sec. 4.104. FORMALITIES

A partition or exchange agreement under Section 4.102 or an agreement under Section 4.103 must be in writing and signed by both parties. Either agreement is enforceable without consideration.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2005, 79th Leg., Ch. 477 (H.B. 202), Sec. 2, eff. September 1, 2005.

ANNOTATIONS

Fischer-Stoker v. Stoker, 174 S.W.3d 272, 278 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). To exchange community property, parties must do so by written agreement.

Recio v. Recio, 666 S.W.2d 645, 649 (Tex. App.—Corpus Christi 1984, no writ). A partition or exchange agreement must be in writing to be enforceable.

Sec. 4.105. ENFORCEMENT

(a) A partition or exchange agreement is not enforceable if the party against whom enforcement is requested proves that:

(1) the party did not sign the agreement voluntarily; or

(2) the agreement was unconscionable when it was signed and, before execution of the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a partition or exchange agreement shall be decided by the court as a matter of law.

(c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section became effective on September 1, 1993. As such, common-law defenses are not available against enforcement of marital agreements executed on or after this date. Agreements entered into before this date can be defended by common-law contract defenses such as ambiguity and failure of consideration.

ANNOTATIONS

Moore v. Moore, 383 S.W.3d 190 (Tex. App.—Dallas 2012, no pet.). A party seeking to show that a premarital agreement was signed involuntarily is not required to prove "an express direct threat or coercion" to establish involuntariness. The Family Code expressly provides that a premarital agreement is not enforceable if it is not voluntarily signed. A husband could not prevent a wife from showing involuntariness by including recitations in the very agreement that the wife alleges was not voluntarily signed.

Izzo v. Izzo, No. 03-09-00395-CV, 2010 WL 1930179 (Tex. App.—Austin May 14, 2010, pet. denied) (mem. op.). The existence of a fiduciary relationship between spouses is relevant to the analysis of whether a spouse executed a marital property agreement involuntarily.

Martin v. Martin, 287 S.W.3d 260, 263 (Tex. App.—Dallas 2009, pet. denied). Whether a party executed a marital property agreement voluntarily is a question of fact depending on all the circumstances and the mental effect on the party claiming involuntary execution.

Sheshunoff v. Sheshunoff, 172 S.W.3d 686, 698 (Tex. App.—Austin 2005, pet. denied). In shifting the burden of proof to the party opposing enforcement, the Texas legislature manifested a strong policy preference that marital property agreements should be enforced. The Family Code sets forth the exclusive remedies available to prevent enforcement of a marital property agreement. Although common law defenses "may inform our analysis of 'voluntariness,' they will not necessarily control."

In re Marriage of Smith, 115 S.W.3d 126, 132 (Tex. App.—Texarkana 2003, pet. denied). Available defenses to the enforcement of property agreements executed on or after September 1, 1993, are specifically limited by the statute. Common-law contract defenses cannot be asserted to defend against enforcement of property agreements executed on or after the date of the statute.

Pletcher v. Goetz, 9 S.W.3d 442, 445 (Tex. App.—Fort Worth 1999, pet. denied). The party challenging the enforceability of a partition and exchange agreement bears the burden of proving that the party entered into the agreement involuntarily and that the agreement was unconscionable when signed.

RESOURCES

Stephen M. Orsinger, *Drafting Enforceable Pre- and Post-Nuptial Agreements: Foreclosing Defenses & Employing Construction*, Adv. Fam. L. Drafting (2011).

Sec. 4.106. RIGHTS OF CREDITORS AND RECORDATION UNDER PARTITION OR EXCHANGE AGREEMENT

(a) A provision of a partition or exchange agreement made under this subchapter is void with respect to the rights of a preexisting creditor whose rights are intended to be defrauded by it.

(b) A partition or exchange agreement made under this subchapter may be recorded in the deed records of the county in which a party resides and in the county in which the real property affected is located. An agreement made under this subchapter is constructive notice to a good faith purchaser for value or a creditor without actual notice only if the instrument is acknowledged and recorded in the county in which the real property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Yamin v. Carroll Wayne Conn, L.P., __ S.W.3d __, No. 14-16-00715-CV, 2018 WL 6722669 (Tex. App.—Houston [14th Dist.] Dec. 21, 2018, no pet. h.). When a party alleges that a partition agreement is fraudulent under both section 4.106 and the Texas Uniform Fraudulent Transfer Act, evidence of fraudulent intent that is sufficient under the Act is also sufficient under section 4.106. Additionally, the Family Code does not authorize attorney's fees in an action brought solely under section 4.106.

Pratt v. Amrex, Inc., 354 S.W.3d 502, 506 (Tex. App.—San Antonio 2011, pet. denied). There is no constructive notice under this section to the receiver of a partition agreement, and any agreement conveying one party's interest to another is ineffective against the receiver if the agreement is not properly recorded. Therefore, a receiver is authorized to convey real property to a receivership estate by special warranty deed, and that conveyance is not void, if the partition agreement is not properly recorded in the county records.

SUBCHAPTER C. AGREEMENT TO CONVERT SEPARATE PROPERTY TO COMMUNITY PROPERTY

Sec. 4.201. DEFINITION

In this subchapter, "property" has the meaning assigned by Section 4.001.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

Sec. 4.202. AGREEMENT TO CONVERT TO COMMUNITY PROPERTY

At any time, spouses may agree that all or part of the separate property owned by either or both spouses is converted to community property.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

ANNOTATIONS

Alonso v. Alvarez, 409 S.W.3d 754, 758 (Tex. App.—San Antonio 2013, pet. denied). Written agreements referring to one spouse's separate property as "our" property can constitute conversion to community property even though the term "conversion" is not used.

Monroe v. Monroe, 358 S.W.3d 711, 721–22 (Tex. App.—San Antonio 2011, pet. denied). In a concurring opinion, Chief Justice Stone discussed the ability of the court to take into account the parties' agreements when making a just and right division of the community estate.

Sec. 4.203. FORMALITIES OF AGREEMENT

(a) An agreement to convert separate property to community property:

(1) must be in writing and:

(A) be signed by the spouses;

(B) identify the property being converted; and

(C) specify that the property is being converted to the spouses' community property; and

(2) is enforceable without consideration.

(b) The mere transfer of a spouse's separate property to the name of the other spouse or to the name of both spouses is not sufficient to convert the property to community property under this subchapter.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

ANNOTATIONS

Alonso v. Alvarez, 409 S.W.3d 754, 758 (Tex. App.—San Antonio 2013, pet. denied). Written agreements referring to one spouse's separate property as "our" property can constitute conversion to community property even though the term "conversion" is not used.

Sec. 4.204. MANAGEMENT OF CONVERTED PROPERTY

Except as specified in the agreement to convert the property and as provided by Subchapter B, Chapter 3, and other law, property converted to community property under this subchapter is subject to:

(1) the sole management, control, and disposition of the spouse in whose name the property is held;

(2) the sole management, control, and disposition of the spouse who transferred the property if the property is not subject to evidence of ownership;

(3) the joint management, control, and disposition of the spouses if the property is held in the name of both spouses; or

(4) the joint management, control, and disposition of the spouses if the property is not subject to evidence of ownership and was owned by both spouses before the property was converted to community property.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

Sec. 4.205. ENFORCEMENT

(a) An agreement to convert property to community property under this subchapter is not enforceable if the spouse against whom enforcement is sought proves that the spouse did not:

(1) execute the agreement voluntarily; or

(2) receive a fair and reasonable disclosure of the legal effect of converting the property to community property.

(b) An agreement that contains the following statement, or substantially similar words, prominently displayed in bold-faced type, capital letters, or underlined, is rebuttably presumed to provide a fair and reasonable disclosure of the legal effect of converting property to community property:

"THIS INSTRUMENT CHANGES SEPARATE PROPERTY TO COMMUNITY PROPERTY. THIS MAY HAVE ADVERSE CONSEQUENCES DURING MARRIAGE AND ON TERMINATION OF THE MARRIAGE BY DEATH OR DIVORCE. FOR EXAMPLE:

"EXPOSURE TO CREDITORS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO THE LIABILITIES OF YOUR SPOUSE. IF YOU DO NOT SIGN THIS AGREEMENT, YOUR SEPARATE PROPERTY IS GENERALLY NOT SUBJECT TO THE LIABILITIES OF YOUR SPOUSE UNLESS YOU ARE PERSONALLY LIABLE UNDER ANOTHER RULE OF LAW.

"LOSS OF MANAGEMENT RIGHTS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO EITHER THE JOINT MANAGEMENT, CONTROL, AND DISPOSITION OF YOU AND YOUR SPOUSE OR THE SOLE MANAGEMENT, CONTROL, AND DISPOSITION OF YOUR SPOUSE ALONE. IN THAT EVENT, YOU WILL LOSE YOUR MANAGEMENT RIGHTS OVER THE PROPERTY. IF YOU DO NOT SIGN THIS AGREEMENT, YOU WILL GENERALLY RETAIN THOSE RIGHTS."

"LOSS OF PROPERTY OWNERSHIP. IF YOU SIGN THIS AGREEMENT AND YOUR MARRIAGE IS SUBSEQUENTLY TERMINATED BY THE DEATH OF EITHER SPOUSE OR BY DIVORCE, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME THE SOLE PROPERTY OF YOUR SPOUSE OR YOUR SPOUSE'S HEIRS. IF YOU DO NOT SIGN THIS AGREEMENT, YOU GENERALLY CANNOT BE DEPRIVED OF OWNERSHIP OF YOUR SEPARATE PROPERTY ON TERMINATION OF YOUR MARRIAGE, WHETHER BY DEATH OR DIVORCE."

(c) If a proceeding regarding enforcement of an agreement under this subchapter occurs after the death of the spouse against whom enforcement is sought, the proof required by Subsection (a) may be made by an heir of the spouse or the personal representative of the estate of that spouse.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000. Amended by Acts 2003, 78th Leg., ch. 230, Sec. 3, eff. Sept. 1, 2003.

Sec. 4.206. RIGHTS OF CREDITORS; RECORDING

(a) A conversion of separate property to community property does not affect the rights of a preexisting creditor of the spouse whose separate property is being converted.

(b) A conversion of separate property to community property may be recorded in the deed records of the county in which a spouse resides and of the county in which any real property is located.

(c) A conversion of real property from separate property to community property is constructive notice to a good faith purchaser for value or a creditor without actual notice only if the agreement to convert the property is acknowledged and recorded in the deed records of the county in which the real property is located.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 5. HOMESTEAD RIGHTS

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SUBCHAPTER A. SALE OF HOMESTEAD; GENERAL RULE

Sec. 5.001. SALE, CONVEYANCE, OR ENCUMBRANCE OF HOMESTEAD

Whether the homestead is the separate property of either spouse or community property, neither spouse may sell, convey, or encumber the homestead without the joinder of the other spouse except as provided in this chapter or by other rules of law.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Benchmark Bank v. Crowder, 919 S.W.2d 657, 662 (Tex. 1996). A bank that refinanced the parties' homestead so that they could pay a federal tax lien was subrogated to the federal tax lien against that homestead. However, because the wife owed none of the delinquent taxes, when the bank foreclosed on the homestead it was required to compensate the wife for the forced sale of her interest in the homestead.

Caulley v. Caulley, 806 S.W.2d 795, 797 (Tex. 1991). Once a party shows that a homestead right exists in a piece of property, that right is presumed to continue until abandonment is proven by competent evidence.

Skelton v. Washington Mutual Bank, F.A., 61 S.W.3d 56, 60 (Tex. App.—Amarillo 2001, no pet.). A vendor's lien against a homestead to secure the payment of purchase money is enforceable without documentation signed by the grantees.

RESOURCES

Richard R. Orsinger, *Probate & Family Law—What a Family Lawyer Can Learn from the Texas Estates Code*, Adv. Fam. L. (2015).

Nicholas Rothschild, *Real Estate Transfers—What Do These Documents Mean?*, Marriage Dissolution (2018).

Sec. 5.002. SALE OF SEPARATE HOMESTEAD AFTER SPOUSE JUDICIALLY DECLARED INCAPACITATED

If the homestead is the separate property of a spouse and the other spouse has been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters under Title 3, Estates Code, the owner may sell, convey, or encumber the homestead without the joinder of the other spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 25, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.014, eff. Sept. 1, 2017.

RESOURCES

Richard R. Orsinger, *Probate & Family Law—What a Family Lawyer Can Learn from the Texas Estates Code*, Adv. Fam. L. (2015).

Richard R. Orsinger & Stephen M. Orsinger, *Practicing Family Law in a Depressed Economy, Part I: Your Law Practice and Your Clients*, Adv. Fam. L. (2009).

Sec. 5.003. SALE OF COMMUNITY HOMESTEAD AFTER SPOUSE JUDICIALLY DECLARED INCAPACITATED

If the homestead is the community property of the spouses and one spouse has been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters

under Title 3, Estates Code, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Family Code Sec. 5.107 and amended by Acts 2001, 77th Leg., ch. 217, Sec. 29, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.015, eff. Sept. 1, 2017.

SUBCHAPTER B. SALE OF HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES

Sec. 5.101. SALE OF SEPARATE HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES

If the homestead is the separate property of a spouse, that spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

(1) has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) has permanently abandoned the homestead and the petitioning spouse;

(3) has permanently abandoned the homestead and the spouses are permanently separated; or

(4) has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 26, eff. Sept. 1, 2001.

ANNOTATIONS

Caulley v. Caulley, 806 S.W.2d 795, 797 (Tex. 1991). Once a party shows that a homestead right exists in a piece of property, that right is presumed to continue until abandonment is proved by competent evidence.

RESOURCES

Richard R. Orsinger & Stephen M. Orsinger, *Practicing Family Law in a Depressed Economy, Part I: Your Law Practice and Your Clients*, Adv. Fam. L. (2009).

Jimmy Vaught, Janet McCullar Vavra & Martha May, *The Marital Residence: There's No Place Like Home*, Marriage Dissolution (2008).

Sec. 5.102. SALE OF COMMUNITY HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES

If the homestead is the community property of the spouses, one spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the petitioning spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

(1) has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) has permanently abandoned the homestead and the petitioning spouse;

(3) has permanently abandoned the homestead and the spouses are permanently separated; or

(4) has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 27, eff. Sept. 1, 2001.

RESOURCES

Richard R. Orsinger & Stephen M. Orsinger, *Practicing Family Law in a Depressed Economy, Part I: Your Law Practice and Your Clients*, Adv. Fam. L. (2009).

Jimmy Vaught, Janet McCullar Vavra & Martha May, *The Marital Residence: There's No Place Like Home*, Marriage Dissolution (2008).

Sec. 5.103. TIME FOR FILING PETITION

The petitioning spouse may file the petition in a court of the county in which any portion of the property is located not earlier than the 60th day after the date of the occurrence of an event described by Sections 5.101(1)–(3) and 5.102(1)–(3) or not less than six months after the date the other spouse has been reported to be a prisoner of war or missing on public service.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 28, eff. Sept. 1, 2001.

Sec. 5.104. APPOINTMENT OF ATTORNEY

(a) Except as provided by Subsection (b), the court may appoint an attorney in a suit filed under this subchapter for the respondent.

(b) The court shall appoint an attorney in a suit filed under this subchapter for a respondent reported to be a prisoner of war or missing on public service.

(c) The court shall allow a reasonable fee for the appointed attorney's services as a part of the costs of the suit.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 5.105. CITATION; NOTICE OF HEARING

Citation and notice of hearing for a suit filed as provided by this subchapter shall be issued and served in the manner provided in Subchapter D, Chapter 3.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 5.106. COURT ORDER

(a) After notice and hearing, the court shall render an order the court deems just and equitable with respect to the sale, conveyance, or encumbrance of a separate property homestead.

(b) After hearing the evidence, the court, on terms the court deems just and equitable, shall render an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage.

(c) The court may:

(1) impose any conditions and restrictions the court deems necessary to protect the rights of the respondent;

(2) require a bond conditioned on the faithful administration of the property; and

(3) require payment to the registry of the court of all or a portion of the proceeds of the sale of the property to be disbursed in accordance with the court's further directions.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section gives the court broad discretion in making orders for the disposition of both separate and community interests in a homestead.

Sec. 5.108. REMEDIES AND POWERS CUMULATIVE

The remedies and the powers of a spouse provided by this subchapter are cumulative of the other rights, powers, and remedies afforded the spouses by law.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE C. DISSOLUTION OF MARRIAGE

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SUBCHAPTER A. GROUNDS FOR DIVORCE AND DEFENSES

Sec. 6.001. INSUPPORTABILITY

On the petition of either party to a marriage, the court may grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Insupportability is one of three no-fault grounds for divorce. The others are living apart and confinement in a mental hospital.

A petitioner pleading insupportability must prove three statutory elements: (1) the marriage is insupportable because of discord or conflict; (2) that discord or conflict destroys the legitimate ends of the marriage relationship; and (3) there is no reasonable expectation of reconciliation.

ANNOTATIONS

Austin v. Austin, 603 S.W.2d 204 (Tex. 1980). A petitioner's stipulation that the marriage had become insupportable constituted sufficient proof for a court to find that this statutory ground for divorce had been met.

In re Marriage of Wellington, No. 10-07-00181-CV, 2008 WL 3971763 (Tex. App.—Waco Aug. 27, 2008, no pet.) (mem. op.). A trial court did abuse its discretion when it granted a divorce based on a spouse's one-word answers to questions affirming the three elements of insupportability.

In re Marriage of Beach, 97 S.W.3d 706, 709 (Tex. App.—Dallas 2003, no pet.). A spouse has no legal duty or obligation to reconcile.

In re Marriage of Richards, 991 S.W.2d 32, 37 (Tex. App.—Amarillo 1999, pet. dism'd). Insupportability requires proof of the existence of discord or conflict that destroys the legitimate ends of the marriage relationship.

Cusack v. Cusack, 491 S.W.2d 714, 717–18 (Tex. Civ. App.—Corpus Christi 1973, writ dism'd w.o.j.). A court must grant a divorce when a party alleges insupportability and the conditions of the statute are met.

Sec. 6.002. CRUELTY

The court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Kemp v. Kemp, No. 11-11-00292-CV, 2013 WL 5891583 (Tex. App.—Eastland Oct. 31, 2013, no pet.). The trial court reasonably found that the husband's conduct amounted to cruelty when the husband yelled and cursed at people on the phone, exhibited road rage while the wife was in the car, kicked his dog, refused to leave her house after she left him until the police came, burned her furniture and clothing, and sent her photos of her deceased son and the husband's deceased mother.

In re Marriage of Rice, 96 S.W.3d 642, 648 (Tex. App.—Texarkana 2003, no pet.). A spouse's conduct rises to the level of cruelty when that conduct renders the couple's living together insupportable, meaning "incapable of being borne, unendurable, insufferable, intolerable."

Brown v. Brown, 704 S.W.2d 528, 529 (Tex. App.—Amarillo 1986, no writ). Cruelty is defined as the "willful and persistent infliction of unnecessary suffering, whether in realization or apprehension, whether in mind or body."

Waheed v. Waheed, 423 S.W.2d 159, 160 (Tex. Civ. App.—Eastland 1967, no writ). Physical acts of violence will support a finding of cruelty.

Redwine v. Redwine, 198 S.W.2d 472, 473 (Tex. Civ. App.—Amarillo 1946, no writ). Acts of cruelty occurring after separation are grounds for divorce.

RESOURCES

Leigh de la Reza, *Pleadings Potpurri*, Adv. Fam. L. Drafting (2017).

Sec. 6.003. ADULTERY

The court may grant a divorce in favor of one spouse if the other spouse has committed adultery.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

In re Marriage of C.A.S., No. 05-11-01338-CV (Tex. App.—Dallas Aug. 6, 2013, no pet.). Adultery committed after separation but before divorce can be a basis for granting a divorce and a disproportionate division of the community estate.

Lisk v. Lisk, No. 01-04-00105-CV, 2005 WL 1704768 (Tex. App.—Houston [1st Dist.] July 21, 2005, no pet.) (mem. op.). A trial court is not obligated to award a wife a greater share of the community estate because the husband had an affair.

Bell v. Bell, 540 S.W.2d 432, 435 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ). Adultery is not limited to acts committed before separation of the parties.

Sec. 6.004. CONVICTION OF FELONY

(a) The court may grant a divorce in favor of one spouse if during the marriage the other spouse:

(1) has been convicted of a felony;

(2) has been imprisoned for at least one year in the Texas Department of Criminal Justice, a federal penitentiary, or the penitentiary of another state; and

(3) has not been pardoned.

(b) The court may not grant a divorce under this section against a spouse who was convicted on the testimony of the other spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.056, eff. September 1, 2009.

Sec. 6.005. ABANDONMENT

The court may grant a divorce in favor of one spouse if the other spouse:

(1) left the complaining spouse with the intention of abandonment; and

(2) remained away for at least one year.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Ritch v. Ritch, 242 S.W.2d 210, 212 (Tex. Civ. App.—Dallas 1951, no writ). For abandonment to exist, the separation must have been voluntary and willful by design or intention.

Sec. 6.006. LIVING APART

The court may grant a divorce in favor of either spouse if the spouses have lived apart without cohabitation for at least three years.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Teas v. Teas, 469 S.W.2d 918, 919 (Tex. Civ. App.—Waco 1971, no writ). The three-year requirement must be satisfied before the time of trial, not before the filing of a petition for divorce.

Sec. 6.007. CONFINEMENT IN MENTAL HOSPITAL

The court may grant a divorce in favor of one spouse if at the time the suit is filed:

(1) the other spouse has been confined in a state mental hospital or private mental hospital, as defined in Section 571.003, Health and Safety Code, in this state or another state for at least three years; and

(2) it appears that the hospitalized spouse's mental disorder is of such a degree and nature that adjustment is unlikely or that, if adjustment occurs, a relapse is probable.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.008. DEFENSES

(a) The defenses to a suit for divorce of recrimination and adultery are abolished.

(b) Condonation is a defense to a suit for divorce only if the court finds that there is a reasonable expectation of reconciliation.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Cusack v. Cusack, 491 S.W.2d 714, 718 (Tex. Civ. App.—Corpus Christi 1973, writ dism'd w.o.j.). Adultery by the other spouse is not a defense to a suit for divorce.

SUBCHAPTER B. GROUNDS FOR ANNULMENT

Sec. 6.102. ANNULMENT OF MARRIAGE OF PERSON UNDER AGE 18

(a) The court may grant an annulment of a marriage of a person 16 years of age or older but under 18 years of age that occurred without parental consent or without a court order as provided by Subchapters B and E, Chapter 2.

(b) A petition for annulment under this section may be filed by:

(1) a next friend for the benefit of the underage party;

(2) a parent; or

(3) the judicially designated managing conservator or guardian of the person of the underage party, whether an individual, authorized agency, or court.

(c) A suit filed under this subsection by a next friend is barred unless it is filed within 90 days after the date of the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.16, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 52 (S.B. 432), Sec. 3, eff. September 1, 2007.

Sec. 6.103. UNDERAGE ANNULMENT BARRED BY ADULTHOOD

A suit to annul a marriage may not be filed under Section 6.102 by a parent, managing conservator, or guardian of a person after the 18th birthday of the person.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 52 (S.B. 432), Sec. 4, eff. September 1, 2007.

Sec. 6.104. DISCRETIONARY ANNULMENT OF UNDERAGE MARRIAGE

(a) An annulment under Section 6.102 of a marriage may be granted at the discretion of the court sitting without a jury.

(b) In exercising its discretion, the court shall consider the pertinent facts concerning the welfare of the parties to the marriage, including whether the female is pregnant.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 52 (S.B. 432), Sec. 5, eff. September 1, 2007.

Sec. 6.105. UNDER INFLUENCE OF ALCOHOL OR NARCOTICS

The court may grant an annulment of a marriage to a party to the marriage if:

(1) at the time of the marriage the petitioner was under the influence of alcoholic beverages or narcotics and as a result did not have the capacity to consent to the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party to the marriage since the effects of the alcoholic beverages or narcotics ended.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Christoph v. Sims, 234 S.W.2d 901, 903–04 (Tex. Civ. App.—Dallas 1950, writ ref'd n.r.e.). Annulment for drunkenness requires that a petitioner be "so drunk as to have dethroned reason, memory, and judgment, and impaired his mental faculties to an extent that would render him non compos mentis."

Sec. 6.106. IMPOTENCY

The court may grant an annulment of a marriage to a party to the marriage if:

(1) either party, for physical or mental reasons, was permanently impotent at the time of the marriage;

(2) the petitioner did not know of the impotency at the time of the marriage; and

(3) the petitioner has not voluntarily cohabited with the other party since learning of the impotency.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.107. FRAUD, DURESS, OR FORCE

The court may grant an annulment of a marriage to a party to the marriage if:

(1) the other party used fraud, duress, or force to induce the petitioner to enter into the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party since learning of the fraud or since being released from the duress or force.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Desta v. Anyaoha, 371 S.W.3d 596, 599 (Tex. App.—Dallas 2012, no pet.). Court of appeals declined to expand the scope of section 6.107 to impose more than what the statute requires. The statute does not condition marriage annulment on finding that a spouse's fraud went to the essentials of the marital relationship.

Leax v. Leax, 305 S.W.3d 22, 30 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). Concealment of five prior marriages amounts to fraud.

Sec. 6.108. MENTAL INCAPACITY

(a) The court may grant an annulment of a marriage to a party to the marriage on the suit of the party or the party's guardian or next friend, if the court finds it to be in the party's best interest to be represented by a guardian or next friend, if:

(1) at the time of the marriage the petitioner did not have the mental capacity to consent to marriage or to understand the nature of the marriage ceremony because of a mental disease or defect; and

(2) since the marriage ceremony, the petitioner has not voluntarily cohabited with the other party during a period when the petitioner possessed the mental capacity to recognize the marriage relationship.

(b) The court may grant an annulment of a marriage to a party to the marriage if:

(1) at the time of the marriage the other party did not have the mental capacity to consent to marriage or to understand the nature of the marriage ceremony because of a mental disease or defect;

(2) at the time of the marriage the petitioner neither knew nor reasonably should have known of the mental disease or defect; and

(3) since the date the petitioner discovered or reasonably should have discovered the mental disease or defect, the petitioner has not voluntarily cohabited with the other party.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

RESOURCES

Sherri A. Evans, L. Darlene Payne Smith, Laurel Smith & Taylor Imel, *Guardianships—What to Do When Your Client Is Not All There*, Adv. Fam. L. (2018).

Jimmy Vaught, *Dealing with the Impaired Client*, Adv. Fam. L. (2018).

Sec. 6.109. CONCEALED DIVORCE

(a) The court may grant an annulment of a marriage to a party to the marriage if:

(1) the other party was divorced from a third party within the 30-day period preceding the date of the marriage ceremony;

(2) at the time of the marriage ceremony the petitioner did not know, and a reasonably prudent person would not have known, of the divorce; and

(3) since the petitioner discovered or a reasonably prudent person would have discovered the fact of the divorce, the petitioner has not voluntarily cohabited with the other party.

(b) A suit may not be brought under this section after the first anniversary of the date of the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.110. MARRIAGE LESS THAN 72 HOURS AFTER ISSUANCE OF LICENSE

(a) The court may grant an annulment of a marriage to a party to the marriage if the marriage ceremony took place in violation of Section 2.204 during the 72-hour period immediately following the issuance of the marriage license.

(b) A suit may not be brought under this section after the 30th day after the date of the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.111. DEATH OF PARTY TO VOIDABLE MARRIAGE

Except as provided by Subchapter C, Chapter 123, Estates Code, a marriage subject to annulment may not be challenged in a proceeding instituted after the death of either party to the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1170 (H.B. 391), Sec. 4.03, eff. September 1, 2007; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.016, eff. Sept. 1, 2017.

SUBCHAPTER C. DECLARING A MARRIAGE VOID

Sec. 6.201. CONSANGUINITY

A marriage is void if one party to the marriage is related to the other as:

(1) an ancestor or descendant, by blood or adoption;

(2) a brother or sister, of the whole or half blood or by adoption;

(3) a parent's brother or sister, of the whole or half blood or by adoption; or

(4) a son or daughter of a brother or sister, of the whole or half blood or by adoption.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.202. MARRIAGE DURING EXISTENCE OF PRIOR MARRIAGE

(a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.

(b) The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Loera v. Loera, 815 S.W.2d 910, 911 (Tex. App.—Corpus Christi 1991, no writ). The burden is on the party seeking annulment to establish: (1) a prior marriage by the other spouse; and (2) the continued validity of that marriage at the time of the subsequent marriage.

RESOURCES

Sallee S. Smyth, *Summary Judgments—Help? Hindrance? Headache?*, Adv. Fam. L. Drafting (2017).

Sec. 6.203. CERTAIN VOID MARRIAGES VALIDATED

Except for a marriage that would have been void under Section 6.201, a marriage that was entered into before January 1, 1970, in violation of the prohibitions of Article 496, Penal Code of Texas, 1925, is validated from the date the marriage commenced if the parties continued until January 1, 1970, to live together as husband and wife and to represent themselves to others as being married.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.204. RECOGNITION OF SAME-SEX MARRIAGE OR CIVIL UNION

(a) In this section, "civil union" means any relationship status other than marriage that:

(1) is intended as an alternative to marriage or applies primarily to cohabitating persons; and

(2) grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage.

(b) A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.

(c) The state or an agency or political subdivision of the state may not give effect to a:

(1) public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction; or

(2) right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction.

Added by Acts 2003, 78th Leg., ch. 124, Sec. 1, eff. Sept. 1, 2003.

COMMENTS

Section 6.204 was recognized as unconstitutional by *Ranolls v. Dewling*, 223 F. Supp. 3d 613 (2016).

ANNOTATIONS

Obergefell v. Hodges, 135 S. Ct. 2584 (2015). Same-sex couples may exercise the fundamental right to marry in all states. No lawful basis exists for a state to refuse to recognize a lawful same-sex marriage performed in another state on the basis that is a same-sex marriage.

State v. Naylor, 466 S.W.3d 783 (Tex. 2015). The State of Texas appealed a decree divorcing two members of the same sex, arguing that the trial court had no authority under this section to grant a same-sex divorce. The court of appeals dismissed the appeal because the State was not a party to the divorce suit and lacked standing to bring the appeal. The Texas Supreme Court affirmed and also denied the State's petition for writ of mandamus.

RESOURCES

Mike Day, *Arguments for and Against the Retroactive Application of Obergefell in Texas*, State Bar Col. Summer School (2017).

Shelly L. Skeen, *State of Rights Post-Obergefell*, Adv. Fam. L. (2016).

Sam M. Yates III, Koby Wilbanks, & Mike Day, *Same-Sex Marriage Issues*, Marriage Dissolution (2018).

Sec. 6.205. MARRIAGE TO MINOR

A marriage is void if either party to the marriage is younger than 18 years of age, unless a court order removing the disabilities of minority of the party for general purposes has been obtained in this state or in another state.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.17, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 52 (S.B. 432), Sec. 6, eff. September 1, 2007. Acts 2017, 85th Leg., R.S., Ch. 934 (S.B. 1705), Sec. 5, eff. Sept. 1, 2017.

Sec. 6.206. MARRIAGE TO STEPCHILD OR STEPPARENT

A marriage is void if a party is a current or former stepchild or stepparent of the other party.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.17, eff. September 1, 2005.

SUBCHAPTER D. JURISDICTION, VENUE, AND RESIDENCE QUALIFICATIONS

Sec. 6.301. GENERAL RESIDENCY RULE FOR DIVORCE SUIT

A suit for divorce may not be maintained in this state unless at the time the suit is filed either the petitioner or the respondent has been:

(1) a domiciliary of this state for the preceding six-month period; and

(2) a resident of the county in which the suit is filed for the preceding 90-day period.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

In re Green, 385 S.W.3d 665 (Tex. App.—San Antonio 2012, orig. proceeding). Being stationed in Texas for three months in 1992 and for five months in 1995–96 did not make a husband a domiciliary of Texas when he had many ties elsewhere and no intent to become a domiciliary.

Griffith v. Griffith, 341 S.W.3d 43, 53 (Tex. App.—San Antonio 2011, no pet.). Whether the requirements of this section have been fulfilled is an issue of fact for the trial court to determine. The trial court's findings will not be set aside unless there is a clear abuse of discretion.

Palau v. Sanchez, No. 03–08–00136–CV, 2010 WL 4595705 (Tex. App.—Austin Nov. 10, 2010, pet. denied) (mem. op.). This section requires a petitioner to be a domiciliary of Texas and a resident of the county in which he or she files suit, but it does not require that a petitioner be a citizen of the United States.

In re Marriage of Lai, 333 S.W.3d 645, 649 (Tex. App.—Dallas 2009, no pet.). When neither spouse meets the domiciliary or residency requirements to obtain a divorce, a trial court does not abuse its discretion by dismissing the divorce suit.

Gonzales v. Gonzales, No. 12–03–00225–CV, 2003 WL 23015065 (Tex. App.—Tyler Dec. 23, 2003, no pet.) (mem. op.). The residency requirement of this section means a petitioner's "physical presence in a county, accompanied by a good faith intention to remain and permanently and definitely make that county his home."

Reynolds v. Reynolds, 86 S.W.3d 272, 276 (Tex. App.—Austin 2002, no pet.). The requirements of this section are mandatory. They may not be waived.

Lutes v. Lutes, 538 S.W.2d 256, 258 (Tex. App.—Houston [14th Dist.] 1976, no writ). A petitioner may file suit in either the county of his residence or in the respondent's county of residence, but petitioner has the right to choose which of these counties the suit is to be filed.

RESOURCES

Kimberly M. Naylor, *How to Get Out of (or Stay in) Dodge—Venue Challenges*, Adv. Fam. L. (2018).

Chris Nickelson, *Jurisdictional Issues*, Adv. Fam. L. (2015).

JoAl Cannon Sheridan and Kristiana Butler, *Which Way Do We Go? Drafting Jurisdictional Challenges and Responses in Divorce and SAPCR Cases*, Adv. Fam. L. Drafting (2017).

Sec. 6.302. SUIT FOR DIVORCE BY NONRESIDENT SPOUSE

If one spouse has been a domiciliary of this state for at least the last six months, a spouse domiciled in another state or nation may file a suit for divorce in the county in which the domiciliary spouse resides at the time the petition is filed.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.303. ABSENCE ON PUBLIC SERVICE

Time spent by a Texas domiciliary outside this state or outside the county of residence of the domiciliary while in the service of the armed forces or other service of the United States or of this state, or while accompanying the domiciliary's spouse in the spouse's service of the armed forces or other service of the United States or of this state, is considered residence in this state and in that county.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 436 (S.B. 1159), Sec. 1, eff. June 17, 2011.

Sec. 6.304. ARMED FORCES PERSONNEL NOT PREVIOUSLY RESIDENTS

A person not previously a resident of this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least the last six months and at a military installation in a county of this state for at least the last 90 days, or who is accompanying the person's spouse during the spouse's military service in those locations and for those periods, is con-

sidered to be a Texas domiciliary and a resident of that county for those periods for the purpose of filing suit for dissolution of a marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 436 (S.B. 1159), Sec. 1, eff. June 17, 2011.

ANNOTATIONS

Fox v. Fox, 559 S.W.2d 407, 410 (Tex. App.—Austin 1977, no writ). Divorce jurisdiction extends to Texas courts regarding military servicemembers stationed in Texas who meet the requirements in this section.

RESOURCES

David D. Farr, *Special Problems for Military Families*, Adv. Fam. L. (2011).

James N. Higdon, *Primer: The Military*, U.T. Fam. L. Front Lines (2010).

Meca L. Walker, *Military Visitation and Conservatorship Issues*, Adv. Fam. L. (2011).

Sec. 6.305. ACQUIRING JURISDICTION OVER NONRESIDENT RESPONDENT

(a) If the petitioner in a suit for dissolution of a marriage is a resident or a domiciliary of this state at the time the suit for dissolution is filed, the court may exercise personal jurisdiction over the respondent or over the respondent's personal representative although the respondent is not a resident of this state if:

(1) this state is the last marital residence of the petitioner and the respondent and the suit is filed before the second anniversary of the date on which marital residence ended; or

(2) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

(b) A court acquiring jurisdiction under this section also acquires jurisdiction over the respondent in a suit affecting the parent-child relationship.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Dawson–Austin v. Austin, 968 S.W.2d 319, 326 (Tex. 1998), *cert. denied*, 525 U.S. 1067 (1999). A spouse cannot, without the involvement of the other spouse, create contacts between a state and the other spouse sufficient to confer jurisdiction for a divorce action. Absent such minimum contacts, a trial court lacks jurisdiction to divide marital property.

Aduli v. Aduli, 368 S.W.3d 805, 816 (Tex. App.—Houston [14th Dist.] 2012, no pet.). "A single act can support jurisdiction as long as there is a substantial connection with the forum state" for purposes of divorce. *See also Reynolds v. Reynolds*, 2 S.W.3d 429, 431 (Tex. App.—Houston [1st Dist.] 1999, no pet.).

Goodenbour v. Goodenbour, 64 S.W.3d 69, 77 (Tex. App.—Austin 2001, pet. denied). The fact that parties live apart does not mean a marital residence does not exist. As long as the parties maintain a marriage, a marital residence exists somewhere.

RESOURCES

Kimberly M. Naylor, *How to Get Out of (or Stay in) Dodge—Venue Challenges*, Adv. Fam. L. (2018).

Chris Nickelson, *Jurisdictional Issues*, Adv. Fam. L. (2015).

JoAl Cannon Sheridan and Kristiana Butler, *Which Way Do We Go? Drafting Jurisdictional Challenges and Responses in Divorce and SAPCR Cases*, Adv. Fam. L. Drafting (2017).

Sec. 6.306. JURISDICTION TO ANNUL MARRIAGE

(a) A suit for annulment of a marriage may be maintained in this state only if the parties were married in this state or if either party is domiciled in this state.

(b) A suit for annulment is a suit in rem, affecting the status of the parties to the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.307. JURISDICTION TO DECLARE MARRIAGE VOID

(a) Either party to a marriage made void by this chapter may sue to have the marriage declared void, or the court may declare the marriage void in a collateral proceeding.

(b) The court may declare a marriage void only if:

(1) the purported marriage was contracted in this state; or

(2) either party is domiciled in this state.

(c) A suit to have a marriage declared void is a suit in rem, affecting the status of the parties to the purported marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.308. EXERCISING PARTIAL JURISDICTION

(a) A court in which a suit for dissolution of a marriage is filed may exercise its jurisdiction over those portions of the suit for which it has authority.

(b) The court's authority to resolve the issues in controversy between the parties may be restricted because the court lacks:

(1) the required personal jurisdiction over a nonresident party in a suit for dissolution of the marriage;

(2) the required jurisdiction under Chapter 152; or

(3) the required jurisdiction under Chapter 159.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Dawson–Austin v. Austin, 968 S.W.2d 319, 324 (Tex. 1998), *cert. denied*, 525 U.S. 1067 (1999). "The United States Supreme Court recognized long ago that a court could have jurisdiction to grant a divorce—an adjudication of parties' status—without having jurisdiction to divide their property—an adjudication of parties' rights."

RESOURCES

Chris Nickelson, *Jurisdictional Issues*, Adv. Fam. L. (2015).

Christopher K. Wrampelmeier, *UCCJEA in Your Daily Practice*, Adv. Fam. L. (2017).

SUBCHAPTER E. FILING SUIT

Sec. 6.401. CAPTION

(a) Pleadings in a suit for divorce or annulment shall be styled "In the Matter of the Marriage of _____ and _____."

(b) Pleadings in a suit to declare a marriage void shall be styled "A Suit To Declare Void the Marriage of _____ and _____."

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

RESOURCES

Natalie L. Webb & Brant M. Webb, *Hidden Gems in the Family Law Practice Manual*, Adv. Fam. L. Drafting (2011).

Sec. 6.402. PLEADINGS

(a) A petition in a suit for dissolution of a marriage is sufficient without the necessity of specifying the underlying evidentiary facts if the petition alleges the grounds relied on substantially in the language of the statute.

(b) Allegations of grounds for relief, matters of defense, or facts relied on for a temporary order that are stated in short and plain terms are not subject to special exceptions because of form or sufficiency.

(c) The court shall strike an allegation of evidentiary fact from the pleadings on the motion of a party or on the court's own motion.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Specific, derogatory, and inflammatory facts should be left out of a petition for divorce.

ANNOTATIONS

McAlister v. McAlister, 75 S.W.3d 481 (Tex. App.—San Antonio 2002, pet. denied). The first court in which a divorce suit is filed is the court of dominant jurisdiction. Dominant jurisdiction can be waived if a petitioner unreasonably delays in having the respondent served with citation.

In re Marriage of Richards, 991 S.W.2d 32, 36 (Tex. App.—Amarillo 1999, pet. dism'd). This section does not prevent a spouse from obtaining facts necessary to prepare his or her defense through discovery.

Ritch v. Ritch, 242 S.W.2d 210, 213 (Tex. Civ. App.—Dallas 1951, no writ). A court may not dissolve a marriage on a ground that was not established.

RESOURCES

Leigh de La Reza, *Pleadings Potpourri*, Adv. Fam. L. Drafting (2017).

John F. Nichols, Jr., *Other Causes of Action*, Adv. Fam. L. (2011).

Chris Nickelson, *Procedural Tricks and Traps*, Marriage Dissolution (2016).

Natalie L. Webb & Brant M. Webb, *Hidden Gems in the Family Law Practice Manual*, Adv. Fam. L. Drafting (2011).

Sec. 6.403. ANSWER

The respondent in a suit for dissolution of a marriage is not required to answer on oath or affirmation.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Watson v. Watson, 286 S.W.3d 519 (Tex. App.—Fort Worth 2009, no pet.). Six pages of testimony in the reporter's record adequately supported a trial court's division of property in a default divorce judgment.

Barry v. Barry, 193 S.W.3d 72, 75 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Evidence presented at a hearing on a default judgment must be sufficient to support the requested property division.

O'Neal v. O'Neal, 69 S.W.3d 347, 350 (Tex. App.—Eastland 2002, no pet.). Four pages of testimony in a reporter's record were not sufficient evidence to support a just and right property division in a default divorce judgment.

Considine v. Considine, 726 S.W.2d 253, 254 (Tex. App.—Austin 1987, no writ). A petitioner must provide proof to support the allegations in a petition for divorce even though the respondent fails to file an answer.

RESOURCES

Chad D. Petross & Whitney L. Vaughan, *Pleadings 101: What to Plead, When to Plead, and Extraordinary Relief*, Fam. L. 101 (2018).

Natalie L. Webb & Brant M. Webb, *Hidden Gems in the Family Law Practice Manual*, Adv. Fam. L. Drafting (2011).

Sec. 6.4035. WAIVER OF SERVICE

(a) A party to a suit for the dissolution of a marriage may waive the issuance or service of process after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The waiver must contain the mailing address of the party who executed the waiver.

(c) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(d) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(e) The party executing the waiver may not sign the waiver using a digitized signature.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

Added by Acts 1997, 75th Leg., ch. 614, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 916 (H.B. 1366), Sec. 2, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 198 (S.B. 814), Sec. 1, eff. September 1, 2015.

COMMENTS

Tex. Civ. Prac. & Rem. Code § 132.001 allows an unsworn declaration to be used "in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law." But under the 2013 amendment to subsection 132.001(c), a waiver of service must be sworn before a notary public.

ANNOTATIONS

Smith v. Smith, 241 S.W.3d 904 (Tex. App.—Beaumont 2007, no pet.). Waiving service of an original petition for divorce does not waive service of an amended petition that seeks more onerous relief than the prior pleading.

Sec. 6.404. INFORMATION REGARDING PROTECTIVE ORDERS

At any time while a suit for dissolution of a marriage is pending, if the court believes, on the basis of any information received by the court, that a party to the suit or a member of the party's family or household may be a victim of family violence, the court shall inform that party of the party's right to apply for a protective order under Title 4.

Added by Acts 2005, 79th Leg., Ch. 361 (S.B. 1275), Sec. 2, eff. June 17, 2005.

Sec. 6.405. PROTECTIVE ORDER AND RELATED ORDERS

(a) The petition in a suit for dissolution of a marriage must state whether, in regard to a party to the suit or a child of a party to the suit:

(1) there is in effect:

(A) a protective order under Title 4;

(B) a protective order under **Subchapter** A, Chapter 7B ~~7A~~, Code of Criminal Procedure; or

(C) an order for emergency protection under Article 17.292, Code of Criminal Procedure; or

(2) an application for an order described by Subdivision (1) is pending.

(b) The petitioner shall attach to the petition a copy of each order described by Subsection (a)(1) in which a party to the suit or the child of a party to the suit was the applicant or victim of the conduct alleged in the application or order and the other party was the respondent or defendant of an action regarding the conduct alleged in the application or order without regard to the date of the order. If a copy of the order is not available at the time of filing, the petition must state that a copy of the order will be filed with the court before any hearing.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.04, eff. Sept. 1, 1999; Acts 2017, 85th Leg., R.S., Ch. 885 (H.B. 3052), Sec. 1, eff. Sept. 1 2017; Acts 2019, 86th Leg., H.B. 4173, Sec. 2.30, eff. Jan. 1, 2021.

Sec. 6.406. MANDATORY JOINDER OF SUIT AFFECTING PARENT-CHILD RELATIONSHIP

(a) The petition in a suit for dissolution of a marriage shall state whether there are children born or adopted of the marriage who are under 18 years of age or who are otherwise entitled to support as provided by Chapter 154.

(a–1) If the parties to a suit for dissolution of a marriage are the intended parents under a gestational agreement that is in effect and that establishes a parent-child relationship between the parties as intended parents and an unborn child on the birth of the child, the petition in the suit for dissolution of a marriage shall state:

(1) that the parties to the marriage have entered into a gestational agreement establishing a parent-child relationship between the parties as intended parents and an unborn child on the birth of the child;

(2) whether the gestational mother under the agreement is pregnant or a child who is the subject of the agreement has been born; and

(3) whether the agreement has been validated under Section 160.756.

(b) If the parties are parents of a child, as defined by Section 101.003, and the child is not under the continuing jurisdiction of another court as provided by Chapter 155, the suit for dissolution of a marriage must include a suit affecting the parent-child relationship under Title 5.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2019, 86th Leg., H.B. 1689, Sec. 1, eff. Sept. 1, 2019.

Section 3 of Acts 2019, 86th Leg., H.B. 1689 states—

"Section 6.406, Family Code, as amended by this Act, applies only to a petition for dissolution of a marriage that is filed on or after the effective date of this Act. A petition for dissolution of a marriage that is filed before the effective date of this Act is governed by the law in effect on the date the petition is filed, and the former law is continued in effect for that purpose."

COMMENTS

A divorce with minor children is actually two suits: one for dissolution of the marriage and the other a SAPCR. The two suits must be heard together.

ANNOTATIONS

In re B.T.G., 494 S.W.3d 839, 842 (Tex. App.—Dallas 2016, no pet.) (citations omitted). "[A] trial court is unable to sever a divorce from a SAPCR. A severance splits a single suit into two or more independent actions, each action resulting in an appealable final judgment. Thus, a severance is the opposite of what the family code requires when it mandates that a divorce suit must include a SAPCR."

In re Hurley, 442 S.W.3d 432 (Tex. App.—Dallas 2013, orig. proceeding). A trial court abused its discretion by ordering transfer of a divorce case filed in Grayson County, where the husband lived, to Cameron County, where the wife and children lived, because venue for the divorce was proper in Grayson County.

Diaz v. Diaz, 126 S.W.3d 705, 707 (Tex. App—Corpus Christi 2004, no pet.). A petition for divorce that does not include a SAPCR will not support a default judgment regarding conservatorship of children.

In re Marriage of Morales, 968 S.W.2d 508, 511 (Tex. App.—Corpus Christi 1998, no pet.). A divorce case in which there are minor children must include a SAPCR.

Sec. 6.407. TRANSFER OF SUIT AFFECTING PARENT-CHILD RELATIONSHIP TO DIVORCE COURT

(a) If a suit affecting the parent-child relationship is pending at the time the suit for dissolution of a marriage is filed, the suit affecting the parent-child relationship shall be transferred as provided by Section 103.002 to the court in which the suit for dissolution is filed.

(b) If the parties are parents of a child, as defined by Section 101.003, and the child is under the continuing jurisdiction of another court under Chapter 155, either party to the suit for dissolution of a marriage may move that court for transfer of the suit affecting the parent-child relationship to the court having jurisdiction of the suit for dissolution. The court with continuing jurisdiction shall transfer the proceeding as provided by Chapter 155. On the transfer of the proceedings, the court with jurisdiction of the suit for dissolution of a marriage shall consolidate the two causes of action.

(c) After transfer of a suit affecting the parent-child relationship as provided in Chapter 155, the court with jurisdiction of the suit for dissolution of a marriage has jurisdiction to render an order in the suit affecting the parent-child relationship as provided by Title 5.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

In re Hurley, 442 S.W.3d 432 (Tex. App.—Dallas 2013, orig. proceeding). A trial court abused its discretion by ordering transfer of a divorce case filed in Grayson County, where the husband lived, to Cameron County, where the wife and children lived, because venue for the divorce was proper in Grayson County.

Neal v. Avey, 853 S.W.2d 707, 709 (Tex. App.—Houston [14th Dist.] 1993, writ denied). Transfer of a SAPCR to the court having jurisdiction over a suit for divorce is mandatory.

Garza v. Texas Department of Human Services, 757 S.W.2d 44, 46-47 (Tex. App.—San Antonio 1988, writ denied). A court has discretion to deny motion to transfer when mandatory transfer provisions are abused.

RESOURCES

Chad D. Petross & Whitney L. Vaughan, *Pleadings 101: What to Plead, When to Plead, and Extraordinary Relief*, Fam. L. 101 (2018).

JoAl Cannon Sheridan and Kristiana Butler, *Which Way Do We Go? Drafting Jurisdictional Challenges and Responses in Divorce and SAPCR Cases*, Adv. Fam. L. Drafting (2017).

Sec. 6.408. SERVICE OF CITATION

Citation on the filing of an original petition in a suit for dissolution of a marriage shall be issued and served as in other civil cases. Citation may also be served on any other person who has or who may assert an interest in the suit for dissolution of the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Zavala v. Schexnayder, No. 04–09–00318–CV, 2009 WL 4695681 (Tex. App.—San Antonio Dec. 9, 2009, no pet.) (mem. op.). Service of citation is defective when there is no verified return of service.

Ackerly v. Ackerly, 13 S.W.3d 454, 457–58 (Tex. App.—Corpus Christi 2000, no pet.). A motion to reduce obligations from a final decree of divorce to a money judgment requires service of a citation.

RESOURCES

Sallee S. Smyth, *Keeping Up with the Kiddos: Case Law Update*, Marriage Dissolution (2015).

Sec. 6.409. CITATION BY PUBLICATION

(a) Citation in a suit for dissolution of a marriage may be by publication as in other civil cases, except that notice shall be published one time only.

(b) The notice shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (name of person to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of _____, Petitioner, was filed in the Court of _____ County, Texas, on the _____ day of _____, against _____, Respondent(s), numbered _____, and entitled 'In the Matter

of Marriage of _____ and _____. The suit requests _____ (statement of relief sought).'

"The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property that will be binding on you.

"Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____; _____.

"

_____

Clerk of the _____ Court of

_____ County, Texas

By _____, Deputy."

(c) The form authorized in this section and the form authorized by Section 102.010 may be combined in appropriate situations.

(d) If the citation is for a suit in which a parent-child relationship does not exist, service by publication may be completed by posting the citation at the courthouse door for seven days in the county in which the suit is filed.

(e) If the petitioner or the petitioner's attorney of record makes an oath that no child presently under 18 years of age was born or adopted by the spouses and that no appreciable amount of property was accumulated by the spouses during the marriage, the court may dispense with the appointment of an attorney ad litem. In a case in which citation was by publication, a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the suit as a part of the record.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

Citation by publication is available in a divorce suit as in other civil cases. However, the procedure is substantially different from that set forth in Tex. R. Civ. P. 244.

ANNOTATIONS

Jones v. Jones, No. 09–06–238–CV, 2007 WL 2324039 (Tex. App.—Beaumont Aug. 16, 2007, no pet.) (mem. op.). A trial court committed reversible error when it granted a default divorce on service by publication and without an ad litem in the absence of a sworn statement that the spouses had accumulated no appreciable amount of property during their marriage and without approving and signing a statement of the evidence.

RESOURCES

Sallee S. Smyth, *Keeping Up with the Kiddos: Case Law Update*, Marriage Dissolution (2015).

Judy Warne & Douglas Warne, *No Matter How Much You Grovel, We Can't Do That*, Marriage Dissolution (2019).

Sec. 6.410. REPORT TO ACCOMPANY PETITION

At the time a petition for divorce or annulment of a marriage is filed, the petitioner shall also file a completed report that may be used by the district clerk, at the time the petition is granted, to comply with Section 194.002, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1128, Sec. 4, eff. Sept. 1, 2003.

Sec. 6.411. CONFIDENTIALITY OF PLEADINGS

(a) This section applies only in a county with a population of 3.4 million or more.

(b) Except as otherwise provided by law, all pleadings and other documents filed with the court in a suit for dissolution of a marriage are confidential, are excepted from required public disclosure under Chapter 552, Government Code, and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing the suit, whichever date is sooner.

Added by Acts 2003, 78th Leg., ch. 1314, Sec. 1, eff. Sept. 1, 2003. Renumbered from Family Code, Section 6.410 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(24), eff. September 1, 2005.

SUBCHAPTER F. TEMPORARY ORDERS

Sec. 6.501. TEMPORARY RESTRAINING ORDER

(a) After the filing of a suit for dissolution of a marriage, on the motion of a party or on the court's own motion, the court may grant a temporary restraining order without notice to the adverse party for the preservation of the property and for the protection of the parties as necessary, including an order prohibiting one or both parties from:

(1) intentionally communicating in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner, with intent to annoy or alarm the other party;

(2) threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party;

(3) placing a telephone call, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other party;

(4) intentionally, knowingly, or recklessly causing bodily injury to the other party or to a child of either party;

(5) threatening the other party or a child of either party with imminent bodily injury;

(6) intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;

(7) intentionally falsifying a writing or record, including an electronic record, relating to the property of either party;

(8) intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

(9) intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

(10) intentionally or knowingly tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;

(11) except as specifically authorized by the court:

(A) selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is:

(i) personal property, real property, or intellectual property; or

(ii) separate or community property;

(B) incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage;

(C) withdrawing money from any checking or savings account in a financial institution for any purpose;

(D) spending any money in either party's possession or subject to either party's control for any purpose;

(E) withdrawing or borrowing money in any manner for any purpose from a retirement, profit sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party; or

(F) withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties;

(12) entering any safe deposit box in the name of or subject to the control of the parties or either party, whether individually or jointly with others;

(13) changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or a child of the parties;

(14) canceling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties;

(15) opening or diverting mail or e-mail or any other electronic communication addressed to the other party;

(16) signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party;

(17) taking any action to terminate or limit credit or charge credit cards in the name of the other party;

(18) discontinuing or reducing the withholding for federal income taxes from either party's wages or salary;

(19) destroying, disposing of, or altering any financial records of the parties, including a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement;

(20) destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

(21) modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

(22) deleting any data or content from any social network profile used or created by either party or a child of the parties;

(23) using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;

(24) terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance at the residence of either party, or in any manner attempting to withdraw any deposit paid in connection with any of those services;

(25) excluding the other party from the use and enjoyment of a specifically identified residence of the other party; or

(26) entering, operating, or exercising control over a motor vehicle in the possession of the other party.

(b) A temporary restraining order under this subchapter may not include a provision:

(1) the subject of which is a requirement, appointment, award, or other order listed in Section 64.104, Civil Practice and Remedies Code; or

(2) that:

(A) excludes a spouse from occupancy of the residence where that spouse is living except as provided in a protective order made in accordance with Title 4;

(B) prohibits a party from spending funds for reasonable and necessary living expenses; or

(C) prohibits a party from engaging in acts reasonable and necessary to conduct that party's usual business and occupation.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., ch. 1081, Sec. 6, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 43 (S.B. 815), Sec. 1, eff. September 1, 2015.

COMMENTS

This section allows a party, subsequent to filing a petition for divorce, to obtain an ex parte temporary restraining order enjoining the other party from engaging in a number of activities. Such an order cannot exclude a party from that party's normal residence (absent meeting the requirements for a protective order under Texas Family Code chapter 71), enjoin a party from spending funds for normal living expenses, or enjoin a party from conducting the party's usual business or occupation.

RESOURCES

Judy Warne & Douglas Warne, *No Matter How Much You Grovel, We Can't Do That*, Marriage Dissolution (2019).

Sec. 6.502. TEMPORARY INJUNCTION AND OTHER TEMPORARY ORDERS

(a) While a suit for dissolution of a marriage is pending and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including the granting of a temporary injunction for the preservation of the property and protection of the parties as deemed necessary and equitable and including an order directed to one or both parties:

(1) requiring a sworn inventory and appraisement of the real and personal property owned or claimed by the parties and specifying the form, manner, and substance of the inventory and appraisal and list of debts and liabilities;

(2) requiring payments to be made for the support of either spouse;

(3) requiring the production of books, papers, documents, and tangible things by a party;

(4) ordering payment of reasonable attorney's fees and expenses;

(5) appointing a receiver for the preservation and protection of the property of the parties;

(6) awarding one spouse exclusive occupancy of the residence during the pendency of the case;

(7) prohibiting the parties, or either party, from spending funds beyond an amount the court determines to be for reasonable and necessary living expenses;

(8) awarding one spouse exclusive control of a party's usual business or occupation; or

(9) prohibiting an act described by Section 6.501(a).

(b) Not later than the 30th day after the date a receiver is appointed under Subsection (a)(5), the receiver shall give notice of the appointment to each lienholder of any property under the receiver's control.

(c) Not later than the seventh day after the date a receiver is appointed under Subsection (a)(5), the court shall issue written findings of fact and conclusions of law in support of the receiver's appointment. If the court dispenses with the issuance of a bond between the spouses as provided by Section 6.503(b) in connection with the receiver's appointment, the court shall include in the court's findings an explanation of the reasons the court dispensed with the issuance of a bond.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 695, Sec. 1, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., Ch. 493 (H.B. 2703), Sec. 1, eff. Sept. 1, 2017.

ANNOTATIONS

Ex parte Hall, 854 S.W.2d 656, 658 (Tex. 1993, orig. proceeding). An order for temporary support must be based on evidence, not on a premarital agreement.

In re Eaton, No. 02-14-00239-CV, 2014 WL 4771608 (Tex. App.—Fort Worth Sept. 25, 2014, orig. proceeding) (mem. op.). "The purpose of temporary spousal maintenance is to protect the welfare of a 'financial dependent' spouse or to maintain the status quo of the family until the final divorce decree."

In re Vitol, Inc., No. 14-10-00049-CV, 2010 WL 308792 (Tex. App.—Houston [14th Dist.] Jan. 28, 2010, orig. proceeding) (mem. op.) (per curiam). A trial court has discretion to put reasonable limits on a party's presentation of evidence at a temporary orders hearing, but it cannot deprive a party of the right to offer any evidence.

In re R.E.D., 278 S.W.3d 850 (Tex. App.—Houston [1st Dist.] 2009, orig. proceeding). A trial court did not abuse its discretion when it held a spouse, acting as trustee, in contempt of court for failing to follow a temporary order to transfer funds into the registry of the court.

In re B.M., 228 S.W.3d 462 (Tex. App.—Dallas 2007, no pet.). A trial court has no discretion to sign a final decree when a party seeks only temporary relief.

In re Bielefeld, 143 S.W.3d 924, 930 (Tex. App.—Fort Worth 2004, no pet.). A trial court has no authority to enforce an order for interim attorney's fees by contempt when the fees were not characterized as either child support or spousal support.

Norem v. Norem, 105 S.W.3d 213, 216 (Tex. App.—Dallas 2003, no pet.). Appointment of a receiver requires evidence that a receivership is necessary to protect and preserve the marital estate.

Herschberg v. Herschberg, 994 S.W.2d 273, 279 (Tex. App.—Corpus Christi 1999, orig. proceeding). A trial court must base temporary support and interim attorney's fees on the needs of the party requesting them as measured against the ability of the other party to pay them.

Grossnickle v. Grossnickle, 935 S.W.2d 830, 848 (Tex. App.—Texarkana 1996, writ denied). Normally, temporary support ends when the divorce is final. However, a trial court may award temporary support pending an appeal of the divorce.

RESOURCES

Thomas L. Ausley & John T. Eck, *Temporary Orders: What You Can Get and How to Get It*, Fam. L. 101 (2012).

Christina Molitor & Hannah Soliz, *Temporary Spousal Support: What Is It and How Do I Get It?*, Marriage Dissolution (2017).

Stephen J. Naylor, *The First Skirmish: Practical Tips for Temporary Orders*, Marriage Dissolution 101 (2019).

Sec. 6.503. AFFIDAVIT, VERIFIED PLEADING, AND BOND NOT REQUIRED

(a) A temporary restraining order or temporary injunction under this subchapter:

(1) may be granted without an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held; and

(2) need not:

(A) define the injury or state why it is irreparable;

(B) state why the order was granted without notice; or

(C) include an order setting the suit for trial on the merits with respect to the ultimate relief sought.

(b) In a suit for dissolution of a marriage, the court may dispense with the issuance of a bond between the spouses in connection with temporary orders for the protection of the parties and their property.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.504. PROTECTIVE ORDERS

On the motion of a party to a suit for dissolution of a marriage, the court may render a protective order as provided by Subtitle B, Title 4.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 1, eff. Sept. 1, 1997.

Sec. 6.505. COUNSELING

(a) While a divorce suit is pending, the court may direct the parties to counsel with a person named by the court.

(b) The person named by the court to counsel the parties shall submit a written report to the court and to the parties before the final hearing. In the report, the counselor shall give only an opinion as to whether there exists a reasonable expectation of reconciliation of the parties and, if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling.

(c) A copy of the report shall be furnished to each party.

(d) If the court believes that there is a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to a person named by the court for further counseling for a period fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court considers desirable. In ordering counseling, the court shall consider the circumstances of the parties, including the needs of the parties' family and the availability of counseling services. At the expiration of the period specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in a divorce suit generally.

(e) If the court orders counseling under this section and the parties to the marriage are the parents of a child under 18 years of age born or adopted during the marriage, the counseling shall include counseling on issues that confront children who are the subject of a suit affecting the parent-child relationship.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., ch. 1325, Sec. 1, eff. Sept. 1, 1997.

ANNOTATIONS

Philp v. Philp, 516 S.W.2d 294, 295 (Tex. Civ. App.—Waco 1974, no writ). A trial court did not abuse its discretion when it refused to order the parties to counseling.

Sec. 6.506. CONTEMPT

The violation of a temporary restraining order, temporary injunction, or other temporary order issued under this subchapter is punishable as contempt.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Ex parte Hall, 854 S.W.2d 656, 658 (Tex. 1993, orig. proceeding). An order for temporary support is enforceable by contempt.

Ex parte Threet, 333 S.W.2d 361, 362 (Tex. 1960, orig. proceeding). The existence of a marriage must be shown before a court may order temporary support.

Ex parte Kimsey, 915 S.W.2d 523, 525 (Tex. App.—El Paso 1995, orig. proceeding). Violating temporary orders for the support of children is enforceable by contempt and punishable by incarceration.

RESOURCES

Cindy Aguirre, Joseph Indelicato, Jr. & Rocky LeAnn Pilgrim, *Proving Up Your Attorney's Fees*, Marriage Dissolution (2019).

Sec. 6.507. INTERLOCUTORY APPEAL

An order under this subchapter, except an order appointing a receiver, is not subject to interlocutory appeal.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER G. ALTERNATIVE DISPUTE RESOLUTION

Sec. 6.601. ARBITRATION PROCEDURES

(a) On written agreement of the parties, the court may refer a suit for dissolution of a marriage to arbitration. The agreement must state whether the arbitration is binding or nonbinding.

(b) If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

In re Provine, 312 S.W.3d 824, 830–31 (Tex. App.—Houston [1st Dist.] 2009, orig. proceeding). A trial court erred by refusing to order arbitration of a postdivorce dispute when the parties' MSA required arbitration.

Goetz v. Goetz, 130 S.W.3d 359, 362 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). If an MSA fails to specify the method for choosing an arbitrator, a court may choose an arbitrator for the parties.

Koch v. Koch, 27 S.W.3d 93, 97 (Tex. App.—San Antonio 2000, no pet.). A clause requiring arbitration of issues related to a premarital agreement is binding.

Cooper v. Bushong, 10 S.W.3d 20, 24–25 (Tex. App.—Austin 1999, pet. denied). Arbitration awards may be set aside only when (1) the award was procured by corruption, fraud, or other undue means; (2) the rights of a party were prejudiced by evident partiality, corruption, misconduct, or willful misbehavior by the arbitrator; (3) the arbitrator exceeded his power or refused to postpone the hearing after a showing of sufficient cause for the postponement, refused to hear evidence material to the controversy, or conducted the hearing contrary to the General Arbitration Act, in a manner that substantially prejudiced the rights of a party; or (4) there was no agreement to arbitrate, the issue was not adversely determined in a proceeding to compel or stay the arbitration, and the party did not participate in the arbitration hearing without raising the objection.

RESOURCES

Katherine A. Kinser & T. Hunter Lewis, *Special Judges, Mini-Trials, and Arbitration*, Adv. Fam. L. (2014).

Keith D. Maples, *Arbitration—Nuts and Bolts*, Adv. Fam. L. (2017).

Kay Redburn & Natalie L. Webb, *Settlement Agreements*, Marriage Dissolution (2019).

Sec. 6.6015. DETERMINATION OF VALIDITY AND ENFORCEABILITY OF CONTRACT CONTAINING AGREEMENT TO ARBITRATE

(a) If a party to a suit for dissolution of a marriage opposes an application to compel arbitration or makes an application to stay arbitration and asserts that the contract containing the agreement to arbitrate is not valid or enforceable, notwithstanding any provision of the contract to the contrary, the court shall try the issue promptly and may order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration.

(b) A determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law.

(c) This section does not apply to:

(1) a court order;

(2) a mediated settlement agreement described by Section 6.602;

(3) a collaborative law agreement described by Section 6.603;

(4) a written settlement agreement reached at an informal settlement conference described by Section 6.604; or

(5) any other agreement between the parties that is approved by a court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1088 (S.B. 1216), Sec. 1, eff. June 17, 2011.

Sec. 6.602. MEDIATION PROCEDURES

(a) On the written agreement of the parties or on the court's own motion, the court may refer a suit for dissolution of a marriage to mediation.

(b) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(d) A party may at any time prior to the final mediation order file a written objection to the referral of a suit for dissolution of a marriage to mediation on the basis of family violence having been committed against the objecting party by the other party. After an objection is filed, the suit may not be referred to mediation unless, on the request of the other party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., ch. 178, Sec. 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1351, Sec. 1, eff. Sept. 1, 1999.

ANNOTATIONS

Milner v. Milner, 361 S.W.3d 615, 618 (Tex. 2012). An MSA is different than other settlement agreements in family law, as it is not mandatory for the trial court to determine if the property division is 'just and right' before approving an MSA. After signed by the parties, the MSA may not be revoked. MSAs that comply with this section are an exception to the general rule that a party may revoke consent to a settlement agreement at any point prior to the court rendering judgment on that agreement.

Morse v. Morse, 349 S.W.3d 55, 56 (Tex. App.—El Paso 2010, no pet.). An MSA that meets the requirements of this section is binding and may not be revoked because of an intentional breach of the agreement by the opposing party.

Wright v. Wright, 280 S.W.3d 901 (Tex. App.—Eastland 2009, no pet.). A nonsubstantive breach of an MSA will not support rescission of the agreement.

Spiegel v. KLRU Endowment Fund, 228 S.W.3d 237 (Tex. App.—Austin 2007, pet. denied). An MSA is enforceable even though the wife died after signing it but before the trial court rendered a divorce.

In re Marriage of Joyner, 196 S.W.3d 883, 891 (Tex. App.—Texarkana 2006, pet. denied). The parties to an MSA are entitled to a judgment incorporating the terms of the agreement absent a showing that the agreement was obtained by fraud, duress, or coercion, or that the agreement was illegal.

Lee v. Lee, 158 S.W.3d 612, 613–14 (Tex. App.—Fort Worth 2005, no pet.). An MSA requires mediation and a mediator.

Boyd v. Boyd, 67 S.W.3d 398, 403 (Tex. App.—Fort Worth 2002, no pet.). A court is not required to enforce an MSA simply because the agreement complies with this section, irrespective of what the agreement provides or how it was procured.

RESOURCES

Ann E. Coover, *Mediation Agreements: How to Enforce or Avoid Them*, Adv. Fam. L. (2018).

Heather L. King & Jessica Hall Janicek, *Settlement Agreements—Informal, MSAs, Etc.*, Marriage Dissolution (2014).

Randall B. Wilhite, *Winning at Mediation*, Adv. Fam. L. (2015).

Sec. 6.604. INFORMAL SETTLEMENT CONFERENCE

(a) The parties to a suit for dissolution of a marriage may agree to one or more informal settlement conferences and may agree that the settlement conferences may be conducted with or without the presence of the parties' attorneys, if any.

(b) A written settlement agreement reached at an informal settlement conference is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or in capital letters or underlined, that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a written settlement agreement meets the requirements of Subsection (b), a party is entitled to judgment on the settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(d) If the court finds that the terms of the written informal settlement agreement are just and right, those terms are binding on the court. If the court approves the agreement, the court may set forth the agreement in full or incorporate the agreement by reference in the final decree.

(e) If the court finds that the terms of the written informal settlement agreement are not just and right, the court may request the parties to submit a revised agreement or set the case for a contested hearing.

Added by Acts 2005, 79th Leg., Ch. 477 (H.B. 202), Sec. 3, eff. September 1, 2005.

COMMENTS

This section provides a way for parties to craft a binding agreement. The requirements mirror the formalities required by subsection 6.602(b) for an MSA.

RESOURCES

Kay Redburn & Natalie L. Webb, *Settlement Agreements*, Marriage Dissolution (2019).

Jimmy Vaught, *The Road to Settlement: Rule 11 Agreements, Informal Settlement Agreements, and Mediated Settlement Agreements*, Marriage Dissolution (2011).

Natalie L. Webb & Brant M. Webb, *Rule 11s, ISAs, MSAs, & Enforcement*, Adv. Fam. L. (2016).

SUBCHAPTER H. TRIAL AND APPEAL

Sec. 6.701. FAILURE TO ANSWER

In a suit for divorce, the petition may not be taken as confessed if the respondent does not file an answer.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Mathis v. Lockwood, 166 S.W.3d 743, 744 (Tex. 2005) (per curiam). Notice sent pursuant to Tex. R. Civ. P. 21a raises a presumption that notice was received, but a court may not presume that notice was received when the receipt is challenged. In that event, receipt of notice must be proven pursuant to the requirements of rule 21a.

Watson v. Watson, 286 S.W.3d 519 (Tex. App.—Fort Worth 2009, no pet.). Six pages of testimony in the reporter's record adequately supported a trial court's division of property in a default divorce judgment. *But see O'Neal v. O'Neal*, 69 S.W.3d 347, 350 (Tex. App.—Eastland 2002, no pet.) (four pages of testimony in reporter's record in sufficient evidence to support a just and right property division in a default divorce judgment).

Vasquez v. Vasquez, 292 S.W.3d 80, 83–84 (Tex. App.—Houston [14th Dist.] 2007, no pet.). A petitioner must present evidence sufficient to support the relief requested even if the respondent fails to answer or appear.

Barry v. Barry, 193 S.W.3d 72, 75 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Evidence presented at a hearing on a default judgment must be sufficient to support the requested property division.

In re Marriage of Runberg, 159 S.W.3d 194, 199 (Tex. App.—Amarillo 2005, no pet.). Trial court abused its discretion in granting a default divorce when the husband appeared and announced ready at a temporary orders hearing, but the wife failed to give him notice of the final trial.

Reavis v. Reavis, No. 01–02–00809–CV, 2003 WL 22922429 (Tex. App.—Houston [1st Dist.] Dec. 11, 2003, no pet.) (mem. op.). Residency and domicile are not deemed admitted by a respondent who defaults. *But see Morris v. Morris*, 717 S.W.2d 189, 190 (Tex. App.—Austin 1986, no writ) (respondent's failure to appear or answer taken as admission of divorce petition's residency and domiciliary allegations).

Considine v. Considine, 726 S.W.2d 253, 254 (Tex. App.—Austin 1987, no writ). A petitioner must provide proof to support the allegations in a petition for divorce even though the respondent fails to file an answer.

RESOURCES

John F. Nichols, Sr., *Evidence—Keeping It In, Keeping It Out, Preservation of Error Through Making and Meeting Objections in Texas Family Law*, Adv. Fam. L. (2012).

Dwayne W. Smith, *Drafting Documents for Successful Default Hearings*, Adv. Fam. L. Drafting (2015).

Sec. 6.702. WAITING PERIOD

(a) Except as provided by Subsection (c), the court may not grant a divorce before the 60th day after the date the suit was filed. A decree rendered in violation of this subsection is not subject to collateral attack.

(b) A waiting period is not required before a court may grant an annulment or declare a marriage void other than as required in civil cases generally.

(c) A waiting period is not required under Subsection (a) before a court may grant a divorce in a suit in which the court finds that:

(1) the respondent has been finally convicted of or received deferred adjudication for an offense involving family violence as defined by Section 71.004 against the petitioner or a member of the petitioner's household; or

(2) the petitioner has an active protective order under Title 4 or an active magistrat's order for emergency protection under Article 17.292, Code of Criminal Procedure, based on a finding of family violence, against the respondent because of family violence committed during the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Acts 2009, 81st Leg., R.S., Ch. 896 (H.B. 72), Sec. 1, eff. June 19, 2009.

ANNOTATIONS

Whiteman v. Whiteman, 682 S.W.2d 357, 358 (Tex. App.—Dallas 1984, no writ) (per curiam). A trial court committed reversible error when it granted a divorce only thirty-eight days after the filing date.

Sec. 6.703. JURY

In a suit for dissolution of a marriage, either party may demand a jury trial unless the action is a suit to annul an underage marriage under Section 6.102.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 52 (S.B. 432), Sec. 7, eff. September 1, 2007.

ANNOTATIONS

In re Marriage of Stein, 190 S.W.3d 73, 75 (Tex. App.—Amarillo 2005, no pet.). Failure to file a jury demand in the first trial did not bar petitioner's right to file a jury demand in the second trial following a remand after appeal.

In re Marriage of Richards, 991 S.W.2d 32, 36 (Tex. App.—Amarillo 1999, pet. dism'd). This section provides that either party may demand a jury trial. The provision "is required by virtue of the right to trial by jury conferred by Article I, Section 15 of our constitution."

Marr v. Marr, 905 S.W.2d 331, 333-34 (Tex. App.—Waco 1995, no writ). A party to a divorce suit is entitled to a jury trial if properly requested. In such a jury trial, only the jury may decide if assets are either community property or separate property, while the court maintains the sole ability to determine a "just and right" division of the marital estate.

Sec. 6.704. TESTIMONY OF HUSBAND OR WIFE

(a) In a suit for dissolution of a marriage, the husband and wife are competent witnesses for and against each other. A spouse may not be compelled to testify as to a matter that will incriminate the spouse.

(b) If the husband or wife testifies, the court or jury trying the case shall determine the credibility of the witness and the weight to be given the witness's testimony.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.705. TESTIMONY BY MARRIAGE COUNSELOR

(a) The report by the person named by the court to counsel the parties to a suit for divorce may not be admitted as evidence in the suit.

(b) The person named by the court to counsel the parties is not competent to testify in any suit involving the parties or their children.

(c) The files, records, and other work products of the counselor are privileged and confidential for all purposes and may not be admitted as evidence in any suit involving the parties or their children.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.706. CHANGE OF NAME

(a) In a decree of divorce or annulment, the court shall change the name of a party specifically requesting the change to a name previously used by the party unless the court states in the decree a reason for denying the change of name.

(b) The court may not deny a change of name solely to keep the last name of family members the same.

(c) A change of name does not release a person from liability incurred by the person under a previous name or defeat a right the person held under a previous name.

(d) A person whose name is changed under this section may apply for a change of name certificate from the clerk of the court as provided by Section 45.106.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.707. TRANSFERS AND DEBTS PENDING DECREE

(a) A transfer of real or personal community property or a debt incurred by a spouse while a suit for divorce or annulment is pending that subjects the other spouse or the community property to liability is void with respect to the other spouse if the transfer was made or the debt incurred with the intent to injure the rights of the other spouse.

(b) A transfer or debt is not void if the person dealing with the transferor or debtor spouse did not have notice of the intent to injure the rights of the other spouse.

(c) The spouse seeking to void a transfer or debt incurred while a suit for divorce or annulment is pending has the burden of proving that the person dealing with the transferor or debtor spouse had notice of the intent to injure the rights of the spouse seeking to void the transaction.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section protects one spouse from actions by the other spouse when the other spouse transfers property, or incurs debt, with the intention to cause harm to the property rights of the innocent spouse. Such transfers of property, or incurring of debt, is void if the debtor or transferee has notice of the intent to injure the innocent spouse's property rights.

RESOURCES

Charla H. Bradshaw, *Causes of Action in Property Cases Including Reconstituted Estate*, Adv. Fam. L. (2015).

Richard R. Orsinger, *Fiduciary Issues in Family Law Cases*, Fiduciary Lit. (2015).

Richard R. Orsinger, *Gifts and Trusts, and How to Attack Them*, New Frontiers in Marital Prop. (2018).

Sec. 6.708. COSTS; ATTORNEY'S FEES AND EXPENSES

(a) In a suit for dissolution of a marriage, the court as it considers reasonable may award costs to a party. Costs may not be adjudged against a party against whom a divorce is granted for confinement in a mental hospital under Section 6.007.

(b) The expenses of counseling may be taxed as costs against either or both parties.

(c) In a suit for dissolution of a marriage, the court may award reasonable attorney's fees and expenses. The court may order the fees and expenses and any postjudgment interest to be paid directly to the attorney, who may enforce the order in the attorney's own name by any means available for the enforcement of a judgment for debt.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 916 (H.B. 1366), Sec. 3, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 916 (H.B. 1366), Sec. 4, eff. September 1, 2013.

COMMENTS

Subsection 6.708(c) effectively makes moot *Gardner Aldrich, LLP v. Tedder*, 421 S.W.3d 651 (Tex. 2013), in which the Texas Supreme Court upheld a trial court that refused to order one party to pay attorney's fees incurred by the other party to the other party's attorney because those fees were neither necessaries nor "community debt."

ANNOTATIONS

Campbell v. Wilder, 487 S.W.3d 146 (Tex. 2016) (citations omitted). "The trial court temporarily enjoined the District Clerk . . . from billing court costs to parties who had filed uncontested affidavits of indigency. . . . The District Clerk argues that Petitioners' divorce decrees require them to pay costs. But the decrees only allocate costs between the parties to each case, requiring each party to bear his or her own costs—whatever they are. For a party who files an affidavit of inability to pay costs, there are no costs to bill; under [TRCP] 145, the affidavit is '[i]n lieu of paying costs.' . . . There are no costs. The District Clerk argues that because the Family Code provides courts with increased latitude to award costs, it is conceivable that a family court could order costs despite an affidavit of inability to pay. This argument flies in the face of our Constitution and case law. . . . It is an abuse of discretion for any judge, including a family law judge, to order costs in spite of an uncontested affidavit of indigence. In any case, the family courts here did not order costs. The language in the judgment merely lays out the division of any costs, not an amount to be charged. It is the ministerial duty of the District Clerk to tabulate the costs and apply the affidavit of indigency. . . . The temporary injunction is proper."

In re Slamker, 365 S.W.3d 718, 720 (Tex. App.—Eastland 2012, orig. proceeding). A trial court has discretion to award expert witness fees under this section.

Smith v. Deneve, 285 S.W.3d 904, 917 (Tex. App.—Dallas 2009, no pet.). A trial court did not abuse its discretion when it granted an award of attorney's fees under this section after finding that no marriage existed. "The plain meaning of section 6.708(a) is that it applies to any 'suit' in which a plaintiff prays for 'dissolution of a marriage.'"

Pletcher v. Goetz, 9 S.W.3d 442, 448 (Tex. App.—Fort Worth 1999, pet. denied). This section does not authorize an award of attorney's fees in "a motion to modify a prior division of property."

Sec. 6.709. TEMPORARY ORDERS DURING APPEAL

(a) In a suit for dissolution of a marriage, on the motion of a party or on the court's own motion, after notice and hearing, the trial court may render a temporary order as considered equitable and necessary for the preservation of the property and for the protection of the parties during an appeal, including an order directed toward one or both parties:

(1) requiring the support of either spouse;

(2) requiring the payment of reasonable and necessary attorney's fees and expenses;

(3) appointing a receiver for the preservation and protection of the property of the parties;

(4) awarding one spouse exclusive occupancy of the parties' residence pending the appeal;

(5) enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division; or

(6) suspending the operation of all or part of the property division that is being appealed.

(b) A temporary order under this section enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division:

(1) may be rendered without:

(A) the issuance of a bond between the spouses; or

(B) an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result;

(2) is not required to:

(A) define the injury or state why the injury is irreparable; or

(B) include an order setting the suit for trial on the merits with respect to the ultimate relief sought; and

(3) may not prohibit a party's use, transfer, conveyance, or dissipation of the property awarded to the other party in the trial court's property division if the use, transfer, conveyance, or dissipation of the property is for the purpose of suspending the enforcement of the property division that is the subject of the appeal.

(c) A temporary order under this section that suspends the operation of all or part of the property division that is the subject of the appeal may not be rendered unless the trial court takes reasonable steps to ensure that the party awarded property in the trial court's property division is protected from the other party's dissipation or transfer of that property.

(d) In considering a party's request to suspend the enforcement of the property division, the trial court shall consider whether:

(1) any relief granted under Subsection (a) is adequate to protect the party's interest in the property awarded to the party; or

(2) the party who was not awarded the property should also be required to provide security for the appeal in addition to any relief granted under Subsection (a).

(e) If the trial court determines that the party awarded the property can be adequately protected from the other party's dissipation of assets during the appeal only if the other party provides security for the appeal, the trial court shall set the appropriate amount of security, taking into consideration any relief granted under Subsection (a) and the amount of security that the other party would otherwise have to provide by law if relief under Subsection (a) was not granted.

(f) In rendering a temporary order under this section that suspends enforcement of all or part of the property division, the trial court may grant any relief under Subsection (a), in addition to requiring the party who was not awarded the property to post security for that part of the property division to be suspended. The trial court may require that the party who was not awarded the property post all or only part of the security that would otherwise be required by law.

(g) This section does not prevent a party who was not awarded the property from exercising that party's right to suspend the enforcement of the property division as provided by law.

(h) A motion seeking an original temporary order under this section:

(1) may be filed before trial; and

(2) may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(i) The trial court retains jurisdiction to conduct a hearing and sign an original temporary order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(j) The trial court retains jurisdiction to modify and enforce a temporary order under this section unless the appellate court, on a proper showing, supersedes the trial court's order.

(k) On the motion of a party or on the court's own motion, after notice and hearing, the trial court may modify a previous temporary order rendered under this section if:

(1) the circumstances of a party have materially and substantially changed since the rendition of the previous order; and

(2) modification is equitable and necessary for the preservation of the property or for the protection of the parties during the appeal.

(l) A party may seek review of the trial court's temporary order under this section by:

(1) motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case;

(2) proper assignment in the party's brief; or

(3) petition for writ of mandamus.

(m) A temporary order rendered under this section is not subject to interlocutory appeal.

(n) The remedies provided in this section are cumulative of all other remedies allowed by law.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 1, eff. Sept. 1, 2017.

COMMENTS

This section gives trial courts discretion to issue certain temporary orders pending an appeal.

ANNOTATIONS

In re Merriam, 228 S.W.3d 413, 414–16 (Tex. App.—Beaumont 2007, orig. proceeding) (per curiam). This section does not "bar an 'interlocutory' appeal of a temporary order rendered during appeal in a suit for dissolution of marriage" or allow an accelerated appeal of an order to pay attorney's fees.

Love v. Bailey–Love, 217 S.W.3d 33, 36 (Tex. App.—Houston [1st Dist.] 2006, no pet.). This section "vests the trial court with discretionary authority to render temporary orders when necessary, either to preserve the marital property pending appeal or to protect the parties pending appeal."

In re Sheshtawy, 154 S.W. 3d 114, 118 (Tex. 2004, orig. proceeding). This section "expressly provides that temporary support awarded for the duration of an appeal may be enforced by a trial court pending appeal."

Bass v. Bass, 106 S.W.3d 311, 315 (Tex. App.—Houston [1st Dist.] 2003, no pet.). A trial court lacked jurisdiction to sign "temporary orders" to preserve property fifteen months after the date a former husband perfected his appeal.

McAlister v. McAlister, 75 S.W.3d 481, 483 (Tex. App.—San Antonio 2002, pet. denied). This section authorized an order that funds received by one party from the other under a divorce decree "shall continue to be received as temporary child and spousal support during the pendency of appeal."

In re Boyd, 34 S.W.3d 708, 710 (Tex. App.—Fort Worth 2000, orig. proceeding). A trial court loses plenary power to award interim support and attorney's fees thirty days after a petitioner perfects his appeal.

RESOURCES

Chris Nickelson, *Recovering Attorney's Fees*, Adv. Fam. L. (2014).

Chris Nickelson, *Temporary Orders During Appeal*, Marriage Dissolution (2018).

Sec. 6.710. NOTICE OF FINAL DECREE

The clerk of the court shall mail a notice of the signing of the final decree of dissolution of a marriage to the party who waived service of process under Section 6.4035 at the mailing address contained in the waiver or the office of the party's attorney of record. The notice must state that a copy of the decree is available at the office of the clerk of the court and include the physical address of that office.

Added by Acts 1997, 75th Leg., ch. 614, Sec. 2, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 529 (H.B. 2422), Sec. 1, eff. June 17, 2011.

Sec. 6.711. FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) In a suit for dissolution of a marriage in which the court has rendered a judgment dividing the estate of the parties, on request by a party, the court shall state in writing its findings of fact and conclusions of law, including the characterization and value of all assets, liabilities, claims, and offsets on which disputed evidence has been presented.

(b) A request for findings of fact and conclusions of law under this section must conform to the Texas Rules of Civil Procedure.

(c) The findings of fact and conclusions of law required by this section are in addition to any other findings or conclusions required or authorized by law.

Added by Acts 2001, 77th Leg., ch. 297, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 2, eff. Sept. 1, 2017.

ANNOTATIONS

Deltuva v. Deltuva, 113 S.W.3d 882, 887 (Tex. App.—Dallas 2003, no pet.). A trial court "is under no obligation to make findings on facts that were not contested or presented to the court."

Panchal v. Panchal, 132 S.W.3d 465, 466–67 (Tex. App.—Eastland 2003, no pet.) (per curiam). This section requires that findings of fact and conclusions of law be made with respect to "each party's assets, liabilities, claims, and offsets on which disputed evidence has been presented." The failure of a trial court to provide sufficient findings and conclusions "is presumed to be harmful."

RESOURCES

John F. Nichols, Sr., *Evidence—Keeping It In, Keeping It Out, Preservation of Error Through Making and Meeting Objections in Texas Family Law*, Adv. Fam. L. (2012).

Chris Nickelson, *Appellate Issues Affecting Your Family Law Practice*, Adv. Fam. L. (2017).

Jimmy Vaught, Leigh De La Reza, & Lisa L. Stewart, *Just the Facts, Ma'am—Family Law Findings of Facts*, Marriage Dissolution (2016).

SUBCHAPTER I. REMARRIAGE

Sec. 6.801. REMARRIAGE

(a) Except as otherwise provided by this subchapter, neither party to a divorce may marry a third party before the 31st day after the date the divorce is decreed.

(b) The former spouses may marry each other at any time.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.802. WAIVER OF PROHIBITION AGAINST REMARRIAGE

For good cause shown the court may waive the prohibition against remarriage provided by this subchapter as to either or both spouses if a record of the proceedings is made and preserved or if findings of fact and conclusions of law are filed by the court.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

RESOURCES

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TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE C. DISSOLUTION OF MARRIAGE

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Sec. 7.001. GENERAL RULE OF PROPERTY DIVISION

In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section applies only to community property. It gives the court broad discretion to divide community assets and debts in a "just and right" manner, there being no requirement to divide the estate equally. The court may consider many different factors in deciding what is just and right.

ANNOTATIONS

Bradshaw v. Bradshaw, 555 S.W.3d 539 (Tex. 2018). As a matter of law, it is not a just and right division of community property to award interest in a community property house to a spouse who used the house to sexually abuse his stepchildren for over a year.

Pearson v. Fillingim, 332 S.W.3d 361, 363 (Tex. 2011). "[T]he phrase 'estate of the parties' encompasses the community property of a marriage, but does not reach separate property."

Murff v. Murff, 615 S.W.2d 696, 699 (Tex. 1981). In making a just and right division, a court may consider many factors, including "the spouses' capacities and abilities, benefits which the party not at fault would have derived from continuation of the marriage, business opportunities, education, relative physical conditions, relative financial condition and obligations, disparity of ages, size of separate estates, and the nature of the property." A court also may consider any disparity of earning capacities and income.

Lynch v. Lynch, 540 S.W.3d 107, 129 (Tex. App.—Houston [1st Dist.] 2017, pet. filed). Appeal from default judgment. Husband asserted that awarding wife 100 percent of the community estate per se makes the property division manifestly unjust and unfair, irrespective of wife's evidence supporting a disproportionate division of the estate. The judgment of the trial court was upheld.

In re Marriage of C.A.S. & D.P.S., 405 S.W.3d 373, 392 (Tex. App.—Dallas 2013, no pet.). Adultery committed after separation but before divorce can be a basis for granting a divorce and a disproportionate division of the community estate.

Gathe v. Gathe, 376 S.W.3d 308, 314 (Tex. App.—Houston [14th Dist.] 2012, no pet.). The issue of divorce and the issue of property division are not severable.

Fischer-Stoker v. Stoker, 174 S.W.3d 272, 277 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). This section requires a trial court to divide the community estate in a just and right manner. It "vests the trial court with broad discretion that will not be reversed on appeal unless the complaining party shows that the trial clearly abused its discretion." The test for abuse of discretion "is whether the court acted arbitrarily or unreasonably, and without any reference to guiding principles."

Hailey v. Hailey, 176 S.W.3d 374, 380 (Tex. App.—Houston [1st Dist.] 2004, no pet.). An appellate court's duty is to "presume that the trial court properly exercised its discretion" in dividing the community estate. A trial court may order an unequal division "when a reasonable basis exists" for such a division. The division "must not be so disproportionate as to be inequitable, and the circumstances must justify awarding more than one half to one party." Factors that a court may consider in making a disproportionate division "include: (1) the education of the parties, (2) their relative earning capacities, (3) the size of their separate estates, and (4) the nature of the community property."

Walter v. Walter, 127 S.W.3d 396, 398–99 (Tex. App.—Dallas 2004, no pet.). A party attacking a property division has the burden to show that the division was not just and right. A court's property division will not be set aside on appeal "unless it appears from the record that the division was clearly the result of an abuse of discretion."

Wilson v. Wilson, 44 S.W.3d 597, 599–600 (Tex. App.—Fort Worth 2001, no pet.). A court may consider attorney's fees, earning potential, business opportunities, and a party's need for future support in determining a just and right division.

Rodriguez v. Rodriguez, 616 S.W.2d 383, 384 (Tex. App.—Houston [14th Dist.] 1981, no writ). If a divorce suit is submitted to a jury, the verdict as to dividing the estate of the spouses is advisory only and the trial court may in its discretion disregard jury findings and divide the property as it deems just and right.

RESOURCES

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Joni Fields, *Characterization and Division of Unusual Assets—Digital Assets, Oil, Gas, and Mineral Rights, Etc.*, Adv. Fam. L. (2014).

Susan F. McLerran, *Property Division*, State Bar College Summer School (2015).

Chris Nicholson, Ann C. McClure, Carolyn I. Wright, Kevin Dubose & Brad M. LaMorgese, *Appellate Practice from Every Angle*, Adv. Fam. L. (2012).

Sec. 7.002. DIVISION AND DISPOSITION OF CERTAIN PROPERTY UNDER SPECIAL CIRCUMSTANCES

(a) In addition to the division of the estate of the parties required by Section 7.001, in a decree of divorce or annulment the court shall order a division of the following real and personal property, wherever situated, in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage:

(1) property that was acquired by either spouse while domiciled in another state and that would have been community property if the spouse who acquired the property had been domiciled in this state at the time of the acquisition; or

(2) property that was acquired by either spouse in exchange for real or personal property and that would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

(b) In a decree of divorce or annulment, the court shall award to a spouse the following real and personal property, wherever situated, as the separate property of the spouse:

(1) property that was acquired by the spouse while domiciled in another state and that would have been the spouse's separate property if the spouse had been domiciled in this state at the time of acquisition; or

(2) property that was acquired by the spouse in exchange for real or personal property and that would have been the spouse's separate property if the spouse had been domiciled in this state at the time of acquisition.

(c) In a decree of divorce or annulment, the court shall confirm the following as the separate property of a spouse if partitioned or exchanged by written agreement of the spouses:

(1) income and earnings from the spouses' property, wages, salaries, and other forms of compensation received on or after January 1 of the year in which the suit for dissolution of marriage was filed; or

(2) income and earnings from the spouses' property, wages, salaries, and other forms of compensation received in another year during which the spouses were married for any part of the year.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., ch. 692, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 838, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 230, Sec. 4, eff. Sept. 1, 2003.

ANNOTATIONS

Cameron v. Cameron, 641 S.W.2d 210 (Tex. 1982). Two different systems of marital property regimes exist in the various states: common law and community property. By enacting section 7.002, the legislature established a workable, uncomplicated framework for just divisions of common-law marital property upon divorce in Texas.

Griffith v. Griffith, 341 S.W.3d 43, 57 (Tex. App.—San Antonio 2011, no pet.). This section requires a trial court to order a just and right division of community property "wherever situated," including "property acquired by either spouse while living in another state" that would be considered community property if the spouse were living in Texas at the time the property was acquired.

Cayan v. Cayan, 38 S.W.3d 161, 164 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). A court is required to order a just and right division of community and quasi-community property in a final decree of divorce.

Ismail v. Ismail, 702 S.W.2d 216, 219 (Tex. App.—Houston [1st Dist.] 1985, writ ref'd n.r.e.). "The quasi-community property statute does not expressly limit its reach to situations where both spouses have migrated from a common law jurisdiction to Texas. . . . [This section] applies to the division of migratory spouses' property regardless of the nature of the previous domicile's legal system."

RESOURCES

Richard L. Flowers, Jr., *Preparation and Use of the Inventory and Appraisement*, Marriage Dissolution Boot Camp (2010).

Sec. 7.003. DISPOSITION OF RETIREMENT AND EMPLOYMENT BENEFITS AND OTHER PLANS

In a decree of divorce or annulment, the court shall determine the rights of both spouses in a pension, retirement plan, annuity, individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant, regardless of whether the person is self-employed, in the nature of compensation or savings.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Freeman v. Freeman, 133 S.W.3d 277, 280 (Tex. App.—San Antonio 2003, no pet.). A court cannot prohibit a party from reducing disposable military retirement pay "in the future by waiving a portion of this pay for any other type of benefits 'including Veteran's benefits.'"

Limbaugh v. Limbaugh, 71 S.W.3d 1, 12 (Tex. App.—Waco 2002, no pet.). This section requires a court to "determine the rights of both spouses in any community-held annuity." A court may order a party to continue an election for a spouse to receive survivorship benefits when the election was made before divorce.

RESOURCES

Larry L. Martin & Autumn Kraus, *Often Overlooked, Mis-Characterized or Mis-Valued Employee Benefits—Contracts, Bonuses, Vacation Pay, Golden Handcuffs, and Survivor Annuities*, Adv. Fam. L. (2014).

David R. McClure, Jack W. Marr & James N. Higdon, *Federal, Military & State Retirement Benefits*, New Frontiers in Marital Prop. (2011).

Sec. 7.004. DISPOSITION OF RIGHTS IN INSURANCE

In a decree of divorce or annulment, the court shall specifically divide or award the rights of each spouse in an insurance policy.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 7.005. INSURANCE COVERAGE NOT SPECIFICALLY AWARDED

(a) If in a decree of divorce or annulment the court does not specifically award all of the rights of the spouses in an insurance policy other than life insurance in effect at the time the decree is rendered, the policy remains in effect until the policy expires according to the policy's own terms.

(b) The proceeds of a valid claim under the policy are payable as follows:

(1) if the interest in the property insured was awarded solely to one former spouse by the decree, to that former spouse;

(2) if an interest in the property insured was awarded to each former spouse, to those former spouses in proportion to the interests awarded; or

(3) if the insurance coverage is directly related to the person of one of the former spouses, to that former spouse.

(c) The failure of either former spouse to change the endorsement on the policy to reflect the distribution of proceeds established by this section does not relieve the insurer of liability to pay the proceeds or any other obligation on the policy.

(d) This section does not affect the right of a former spouse to assert an ownership interest in an undivided life insurance policy, as provided by Subchapter D, Chapter 9.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 7.006. AGREEMENT INCIDENT TO DIVORCE OR ANNULMENT

(a) To promote amicable settlement of disputes in a suit for divorce or annulment, the spouses may enter into a written agreement concerning the division of the property and the liabilities of the spouses and maintenance of either spouse. The agreement may be revised or repudiated before rendition of the divorce or annulment unless the agreement is binding under another rule of law.

(b) If the court finds that the terms of the written agreement in a divorce or **an** annulment are just and right, those terms are binding on the court. If the court approves the agreement, the court may set forth the agreement in full or incorporate the agreement by reference in the final decree. **If the court incorporates the agreement by reference in the final decree, the agreement is not required to be filed with the court or the court clerk.**

(c) If the court finds that the terms of the written agreement in a divorce or annulment are not just and right, the court may request the spouses to submit a revised agreement or may set the case for a contested hearing.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2019, 86th Leg., H.B. 559, Sec. 1, eff. May 24, 2019.

Section 3 of Acts 2019, 86th Leg., H.B. 559 states—

"Section 7.006(b), Family Code, as amended by this Act, applies to an agreement incorporated by reference in a final decree of divorce or annulment regardless of whether the decree is signed before, on, or after the effective date of this Act."

COMMENTS

This section allows divorcing parties to enter into agreements to divide property and allocate debt that are binding once a court has confirmed they are just and right, and once judgment is rendered. Prior to rendition, a party can revoke his consent to an agreement incident to divorce, and although a consent judgment may not then be rendered, enforcement under contract theories may still be available.

ANNOTATIONS

Abrams v. Salinas, 467 S.W.3d 606, 610 (Tex. App.—San Antonio 2015, no pet.). Divorce agreements are considered contracts and their legal force and meaning are governed by contract law. If a court approves an agreement made by the divorcing parties, the court may set forth the agreement in full or incorporate the agreement by reference in the final decree. Once an agreement has been made part of the court's judgment, it is no longer merely a contract but is the judgment of the court. When the terms of an agreed decree have been incorporated into the judgment, an action for enforcement of the judgment may be brought within ten years from the date of the judgment.

Snider v. Snider, 343 S.W.3d 453, 457 (Tex. App.—El Paso 2010, no pet.). "When a trial court renders judgment on the parties' settlement agreement, the judgment must be in strict compliance with the terms of the agreement."

Keim v. Anderson, 943 S.W.2d 938, 946 (Tex. App.—El Paso 1997, no writ.) "The trial court has no power to supply terms, provisions, or conditions not previously agreed to by the parties."

McCollough v. McCollough, 212 S.W.3d 638, 648 (Tex. App.—Austin 2006, no pet.). Contractual alimony in an agreement incident to divorce approved by the court pursuant to this section is a contractual obligation and not court-ordered maintenance pursuant to chapter 8 of the Family Code.

Lee v. Lee, 158 S.W.3d 612, 613 (Tex. App.—Fort Worth 2005, no pet.). The parties' settlement agreement, which was not an MSA, could "be revised or repudiated before divorce is rendered unless the agreement is binding under another rule of law."

Woods v. Woods, 167 S.W.3d 932, 933 (Tex. App.—Amarillo 2005, no pet.). A party "may revoke consent to a settlement agreement at any time before judgment is rendered on the agreement." A "trial court cannot render a valid judgment absent the consent of the parties at the time it is rendered."

Markowitz v. Markowitz, 118 S.W.3d 82, 88–89 (Tex. App.—Houston [14th Dist.] 2003, pet. denied), *cert. denied*, 543 U.S. 820 (2004). A court has discretion to approve or to reject a settlement agreement to ensure a just and right division of the marital estate. "Texas law requires a finding by the trial court that the terms of a written agreement for the division of assets and liabilities are just and right."

Cayan v. Cayan, 38 S.W.3d 161, 165 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). "Because section 7.006(a) expressly recognizes that a settlement agreement can be made binding before rendition of the divorce under another rule of law, and because section 6.602 expressly entitles a party to a section 6.602 agreement to judgment notwithstanding other law, we interpret section 6.602 simply as an exception to section 7.006(a) whereby parties to a divorce may elect to make their agreement binding as of the time of its execution rather than at the subsequent time the divorce is rendered."

RESOURCES

Gary L. Nickelson & Chris Nickelson, *Finalizing the Deal: Rule 11 Agreements, Mediated Settlement Agreements, and the Importance of Getting the Orders Timely Signed*, Marriage Dissolution (2010).

Jimmy Vaught, *The Road to Settlement: Rule 11 Agreements, Informal Settlement Agreements, and Mediated Settlement Agreements*, Marriage Dissolution (2011).

Sec. 7.007. DISPOSITION OF CLAIM FOR REIMBURSEMENT

In a decree of divorce or annulment, the court shall determine the rights of both spouses in a claim for reimbursement as provided by Subchapter E, Chapter 3, and shall apply equitable principles to:

(1) determine whether to recognize the claim after taking into account all the relative circumstances of the spouses; and

(2) order a division of the claim for reimbursement, if appropriate, in a manner that the court considers just and right, having due regard for the rights of each party and any children of the marriage.

Added by Acts 2001, 77th Leg., ch. 838, Sec. 5, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 7, eff. September 1, 2009.

COMMENTS

This section makes clear that courts may grant or deny reimbursement claims based on principles of equity.

ANNOTATIONS

Penick v. Penick, 783 S.W.2d 194, 198 (Tex. 1988). "In the final analysis, great latitude must be given to the trial court in applying equitable principles to value a claim for reimbursement." The trial court's discretion when deciding a claim for reimbursement is as broad as its discretion when dividing the community estate.

RESOURCES

Leigh de la Reza, Jimmy Vaught & Kacy Dudley, *Go On, Take the Money and Run: How to Get the Most Out of Reimbursement Claims*, Marriage Dissolution (2014).

Joan F. Jenkins & Susan E. Oehl, *Reimbursement*, Marriage Dissolution (2012).

Sec. 7.008. CONSIDERATION OF TAXES

In ordering the division of the estate of the parties to a suit for dissolution of a marriage, the court may consider:

(1) whether a specific asset will be subject to taxation; and

(2) if the asset will be subject to taxation, when the tax will be required to be paid.

Added by Acts 2005, 79th Leg., Ch. 168 (H.B. 203), Sec. 1, eff. September 1, 2005.

ANNOTATIONS

Quijano v. Quijano, 347 S.W.3d 345, 352 n.8 (Tex. App.—Houston [14th Dist.] 2011, no pet.). This section "expressly authorizes courts to take into consideration whether a particular asset will be subject to taxation in the future."

Sec. 7.009. FRAUD ON THE COMMUNITY; DIVISION AND DISPOSITION OF RECONSTITUTED ESTATE

(a) In this section, "reconstituted estate" means the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred.

(b) If the trier of fact determines that a spouse has committed actual or constructive fraud on the community, the court shall:

(1) calculate the value by which the community estate was depleted as a result of the fraud on the community and calculate the amount of the reconstituted estate; and

(2) divide the value of the reconstituted estate between the parties in a manner the court deems just and right.

(c) In making a just and right division of the reconstituted estate under Section 7.001, the court may grant any legal or equitable relief necessary to accomplish a just and right division, including:

(1) awarding to the wronged spouse an appropriate share of the community estate remaining after the actual or constructive fraud on the community;

(2) awarding a money judgment in favor of the wronged spouse against the spouse who committed the actual or constructive fraud on the community; or

(3) awarding to the wronged spouse both a money judgment and an appropriate share of the community estate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 487 (H.B. 908), Sec. 1, eff. September 1, 2011.

COMMENTS

This section allows a court to consider property removed from the community estate by the fraud of one of the parties and add the value of that property back into the community estate. The court may compensate the wronged spouse by considering the value of the removed property in the overall division through an award of a disproportionate amount of the remaining property, by awarding the wronged spouse a judgment against the perpetrator of the fraud, or by a combination of both.

ANNOTATIONS

Schlueter v. Schlueter, 975 S.W.2d 584, 585 (Tex. 1998). There is no independent tort cause of action between spouses for fraud on the community.

Cantu v. Cantu, 556 S.W.3d 420 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Trial court did not err in finding that husband committed fraud on the community estate in the amount of $3,911,805 and awarding that amount to husband as a community asset in the divorce in furtherance of a just and right division.

Kite v. King, 492 S.W.3d 468 (Tex. App.—Amarillo 2016, no pet.). Claims involving the fraudulent transfer of community property belong to the community estate and must be tried during the divorce proceedings. There is no independent tort claim that can be brought outside the divorce proceeding.

Trevino v. Garza, No. 13-15-00231-CV, 2016 WL 1072627 (Tex. App.—Corpus Christi Mar. 17, 2016, no pet.) (mem. op.). A claim for waste under section 7.009 is distinct from a claim for reimbursement under Family Code section 3.402, and each claim must be properly pled to support a judgment for such relief unless tried by consent.

Slicker v. Slicker, 464 S.W.3d 850, 859 (Tex. App.—Dallas 2015, no pet.). If the court determines that a spouse has committed actual or constructive fraud on the community estate, it may grant any legal or equitable relief necessary to accomplish a just and right division.

In re Marriage of Ford, 435 S.W.3d 347 (Tex. App.—Texarkana 2014, no pet.). The trial court did not err in failing to reconstitute the marital estate when the wife's pleadings did not seek relief under section 7.009 and did not clearly and unequivocally allege fraud in her petition or in her argument to the trial court.

RESOURCES

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Sherri A. Evans & Michelle Adams Thuillier, *The Reconstituted Estate*, Adv. Fam. L. (2012).

Heather L. King, *Achieving "Just and Right": Fraud on the Community Estate and Reimbursement*, Marriage Dissolution (2017).

John F. Nichols, Jr., *Other Causes of Action*, Adv. Fam. L. (2011).

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Rhonda F. Hunter, *Contractual Alimony and Spousal Maintenance—"You'll Make It Up In No Time"*, Adv. Fam. L. (2006).

Latrelle Bright Joy, *Spousal Maintenance After the 82nd Legislative Session*, Fam. L. Drafting (2011).

Linda B. Thomas & Karin D. Mayer, *Spousal Maintenance*, Marriage Dissolution (2011).

Linda B. Thomas, Karin D. Mayer & Chris Nickelson, *Making the Case for Spousal Maintenance*, Adv. Fam. L. (2010).

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8.001. DEFINITIONS

In this chapter:

(1) "Maintenance" means an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse.

(2) "Notice of application for a writ of withholding" means the document delivered to an obligor and filed with the court as required by this chapter for the nonjudicial determination of arrears and initiation of withholding for spousal maintenance.

(3) "Obligee" means a person entitled to receive payments under the terms of an order for spousal maintenance.

(4) "Obligor" means a person required to make periodic payments under the terms of an order for spousal maintenance.

(5) "Writ of withholding" means the document issued by the clerk of a court and delivered to an employer, directing that earnings be withheld for payment of spousal maintenance as provided by this chapter.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

COMMENTS

The Texas legislature added spousal maintenance to the Family Code in 1995. The new spousal maintenance provisions applied only to causes filed on or after September 1, 1995. It is important to note the difference between contractual alimony and spousal maintenance. Spousal maintenance, which is court ordered, takes into consideration factors such as the inability of a spouse to obtain work, thus showing that support from the other spouse is necessary. Spousal maintenance is enforced by filing a motion for enforcement, whereas alimony is enforced through a breach of contract claim.

ANNOTATIONS

Dalton v. Dalton, 551 S.W.3d 126 (Tex. 2018). A trial court cannot use court-ordered wage withholding to enforce a voluntary support obligation that does not qualify as spousal maintenance under Family Code chapter 8 unless the parties specifically agree to that enforcement method.

In re Green, 221 S.W.3d 645, 647 (Tex. 2007, orig. proceeding) (per curiam). A former spouse may not be imprisoned for failure to pay alimony, as opposed to failure to pay statutory spousal maintenance. The failure to pay a private alimony debt, even one referenced in a court order, is not contempt of court punishable by imprisonment. Enforcement of alimony must be through contractual remedies.

Francis v. Francis, 412 S.W.2d 29, 33 (Tex. 1967). An agreement for the payment of alimony will have whatever legal force the law of contracts will give to it.

In re Marriage of Day, 497 S.W.3d 87, 89 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). The trial court abused its discretion when it awarded spousal maintenance in a default judgment when there was no request in the pleadings.

Bailey v. Bailey, No. 07-14-00158-CV, 2016 WL 638058 (Tex. App.—Amarillo Feb. 5, 2016, no pet.) (mem. op.). Spousal maintenance can be enforced through the garnishment of wages when it is agreed to by parties and approved by the court.

Heller v. Heller, 359 S.W.3d 902, 903–04 (Tex. App.—Beaumont 2012, no pet.). Spousal maintenance is defined as periodic payments from the future income of one spouse for the support of the other spouse. The parties' divorce

decree did not specify that the payments were spousal maintenance or order the ex-husband to make them. The record reflected a traditional alimony promise, not an award of spousal maintenance.

Kee v. Kee, 307 S.W.3d 812, 813 (Tex. App.—Dallas 2010, pet. denied). The Family Code does not apply in cases of contractual alimony. Because a divorce decree specified that the ex-husband would pay alimony and failed to mention the Family Code or spousal maintenance, the spousal maintenance provisions of the Family Code did not apply. Also, spousal maintenance must terminate if the party receiving maintenance remarries.

Espeche v. Ritzell, 123 S.W.3d 657, 666 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). A former spouse's written agreement to pay his ex-spouse's medical and dental insurance and to pay her half of his yearly income tax refund fell within the definition of spousal maintenance.

SUBCHAPTER B. SPOUSAL MAINTENANCE

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE

In a suit for dissolution of a marriage or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if the spouse seeking maintenance will lack sufficient property, including the spouse's separate property, on dissolution of the marriage to provide for the spouse's minimum reasonable needs and:

(1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence, as defined by Section 71.004, committed during the marriage against the other spouse or the other spouse's child and the offense occurred:

(A) within two years before the date on which a suit for dissolution of the marriage is filed; or

(B) while the suit is pending; or

(2) the spouse seeking maintenance:

(A) is unable to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability;

(B) has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse's minimum reasonable needs; or

(C) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.05, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 304, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 8.002 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 914 (H.B. 201), Sec. 1, eff. September 1, 2005. Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 1, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 242 (H.B. 389), Sec. 2, eff. September 1, 2013.

COMMENTS

There are three main ways for a spouse to be eligible to receive court-ordered spousal maintenance, but under all of them, the spouse seeking spousal maintenance must prove that he or she will lack sufficient property to meet his or her minimum needs. The first way (subsection (1)) is to prove that the providing spouse has committed a criminal offense that constitutes an act of family violence in the two years preceding the filing of the petition for divorce or while the case is pending. The second way (subsection (2)(a)(c)) is to prove that the spouse who will receive spousal main-

tenance is the custodian of a child of the marriage who requires substantial care and personal supervision because the child has a physical or mental disability such that the child's disability prevents the custodial spouse from being employed. The third way (subsection (2)(b)) is to prove that the parties have been married for ten years or longer and that the spouse seeking spousal maintenance lacks the ability to provide for that spouse's basic needs.

ANNOTATIONS

Mathis v. Mathis, No. 12-17-00049-CV, 2018 WL 1324777 (Tex. App.—Tyler Mar. 15, 2018, no pet.) (mem. op.). There must be evidence that the obligor has the ability to earn income to satisfy a spousal maintenance obligation.

In re Marriage of Mozley, No. 06-16-00004-CV, 2016 WL 4256926 (Tex. App.—Texarkana Aug. 12, 2016, no pet.) (mem. op.). The trial court did not abuse its discretion when refusing to award spousal maintenance without consideration of the fault of the parties when both spouses engaged in extramarital affairs.

O'Carolan v. Hopper, 414 S.W.3d 288, 307 (Tex. App.—Austin 2013, no pet.). A trial court has discretion to award spousal maintenance only if the party seeking maintenance meets specific eligibility requirements and either lacks the ability to support herself because of an incapacitating physical or mental disability or clearly lacks the earning ability to provide for her own minimum reasonable needs.

Ayala v. Ayala, 387 S.W.3d 721 (Tex. App.—Houston [1st Dist.] 2011, no pet.). A wife met the burden of proving that she could not provide for her minimum reasonable needs because she was diabetic and blind.

Tellez v. Tellez, 345 S.W.3d 689, 692 (Tex. App.—Dallas 2011, no pet.). Spousal maintenance was awarded to a wife who showed that her monthly expenses exceeded her monthly income.

Diaz v. Diaz, 350 S.W.3d 251, 254 (Tex. App.—San Antonio 2011, pet. denied). Determining the minimum reasonable needs of a person is fact-specific and must be undertaken on a case-by-case basis. A list of expenses is helpful to a court, but by itself, it is insufficient to establish minimum reasonable needs.

Petra v. Petra, No. 04-09-00214-CV, 2010 WL 374388 (Tex. App.—San Antonio Feb. 3, 2010, no pet.) (mem. op.). A trial court abused its discretion by awarding spousal maintenance because the record failed to establish that the wife could not meet her reasonable needs with the income and property she received in the divorce.

Brooks v. Brooks, 257 S.W.3d 418, 426 (Tex. App.—Fort Worth 2008, pet. denied). A wife was awarded spousal maintenance based on an incapacitating physical disability after testifying that she had osteoporosis and disc problems with her back and that she could not work because the osteoporosis was so severe that she was at risk of breaking her bones.

Greco v. Greco, No. 04-07-00748-CV, 2008 WL 4056328 (Tex. App.—San Antonio Aug. 29, 2008, no pet.) (mem. op.). A wife's request for maintenance was denied, even though the parties were married longer than ten years and the wife was making very little money, because the husband presented evidence that the wife had the training, skills, and education to obtain employment and did not have a mental or physical disability. In addition, the trial court found that the parties' children did not require substantial personal supervision or care and that the marriage ended because of the wife's infidelity.

Guillot v. Guillot, No. 01-06-01039-CV, 2008 WL 2548547 (Tex. App.—Houston [1st Dist.] June 26, 2008, no pet.) (mem. op.). Even though the wife had a better education than the husband, the wife met the statutory requirements for spousal maintenance because the husband had received deferred adjudication for a criminal act that constituted family violence.

Dunaway v. Dunaway, No. 14-06-01042-CV, 2007 WL 3342020 (Tex. App.—Houston [14th Dist.] Nov. 13, 2007, no pet.) (mem. op.). A court did not abuse its discretion by awarding a wife spousal maintenance for an indefinite period because the wife provided some evidence that she had an incapacitating physical or mental disability. The wife testified that she had minimal brain damage which affected both her ability to learn and to secure employment. She also testified that she had a deteriorating disc in her lower back, her knees often hurt, she suffered from seizures, and she suffered from depression.

Chafino v. Chafino, 228 S.W.3d 467, 474–75 (Tex. App.—El Paso 2007, no pet.). A spouse seeking spousal maintenance must meet certain requirements. A wife was not entitled to spousal maintenance because she failed to prove that her medical needs prevented her from obtaining employment. Moreover, the trial court awarded the wife over 70 percent of the marital estate.

Stucki v. Stucki, 222 S.W.3d 116, 120 (Tex. App.—Tyler 2006, no pet.). A court did not award a wife spousal maintenance because she received half the husband's insurance renewal commissions in the parties' divorce and she had the skills to find employment.

Sheshtawy v. Sheshtawy, 150 S.W.3d 772, 777–78 (Tex. App.—San Antonio 2004, pet. denied), *cert. denied*, 546 U.S. 823 (2005). A trial court abused its discretion in awarding spousal maintenance when the wife failed to present any evidence that spousal maintenance was warranted.

Yarbrough v. Yarbrough, 151 S.W.3d 687, 691 (Tex. App.—Waco 2004, no pet.). The disability of the parties' child entitled a wife to receive spousal maintenance because taking care of the child prevented the wife from obtaining employment.

Trueheart v. Trueheart, No. 14-02-01256-CV, 2003 WL 22176626 (Tex. App.—Houston [14th Dist.] Sept. 23, 2003, no pet.) (mem. op.). The evidence produced at trial supported an award of spousal maintenance to the wife who had not worked outside the home in the past twenty-one years, had only a high school education, and had limited computer and technology skills.

Stone v. Stone, 119 S.W.3d 866, 869–70 (Tex. App.—Eastland 2003, no pet.). A court awarded a wife spousal maintenance because she introduced evidence at trial that she lacked income and property to support her minimum reasonable needs.

Smith v. Smith, 115 S.W.3d 303, 308–09 (Tex. App.—Corpus Christi 2003, no pet.). A court awarded spousal maintenance to a husband even though he had some computer skills because his computer skills were not sufficient to gain employment. The court found the husband to be permanently disabled and noted that he would not receive retirement benefits until his former wife retired.

Deltuva v. Deltuva, 113 S.W.3d 882, 888 (Tex. App.—Dallas 2003, no pet.). A wife was entitled to monthly spousal maintenance even though she had a part-time job at the time of the divorce because she showed that her expenses exceeded her income.

Alaghehband v. Abolbaghaei, No. 03-02-00445-CV, 2003 WL 1986777 (Tex. App.—Austin May 1, 2003, no pet.) (mem. op.). A wife proved that she was entitled to spousal maintenance by showing that she did not have an educational degree that was recognized in the United States, that she had returned to the workforce two and one-half years earlier after an eight-year absence to take care of the parties' autistic child, that she worked part-time in retail sales at $10 per hour, and that she spoke only limited English, all of which prevented her from working full time.

Tyler v. Talburt, No. 04-02-00245-CV, 2003 WL 1964186 (Tex. App.—San Antonio Apr. 30, 2003, no pet.). A husband was entitled to spousal maintenance because of a physical disability following a kidney transplant and other health problems.

Kennedy v. Kennedy, 125 S.W.3d 14, 21 (Tex. App.—Austin 2002, pet. denied), cert. denied, 540 U.S. 1178 (2004). A court denied a spousal maintenance award to a wife, despite a jury's finding that an incapacitating physical or mental disability prevented her from supporting herself, because she received sufficient property in the divorce to meet her minimum reasonable needs.

Amos v. Amos, 79 S.W.3d 747, 750 (Tex. App.—Corpus Christi 2002, no pet.). A court awarded spousal maintenance to a wife who had severe carpal tunnel syndrome that required her to take frequent breaks and inhibited her ability to work.

Limbaugh v. Limbaugh, 71 S.W.3d 1, 15 (Tex. App.—Waco 2002, no pet.). A trial court awarded a wife spousal maintenance when her monthly expenses exceeded her income.

Pickens v. Pickens, 62 S.W.3d 212, 216 (Tex. App.—Dallas 2001, pet. denied). Expert witness testimony is not required to support an award of spousal maintenance. Testimony from an incapacitated wife, supported by the medical records of two of her doctors and the narrative report of a rehabilitation consultant, constituted sufficient evidence of a permanent incapacitating physical disability.

Alexander v. Alexander, 982 S.W.2d 116, 119 (Tex. App.—Houston [1st Dist.] 1998, no pet.). A wife proved that she was entitled to spousal maintenance by showing that she was married to the husband for fourteen years, was enrolled in a full-time degree program, and planned to obtain employment on the completion of her degree.

DuBois v. DuBois, 956 S.W.2d 607, 612 (Tex. App.—Tyler 1997, no pet.). A court properly denied a wife spousal maintenance because she was a certified teacher and had been awarded a portion of the husband's retirement account.

Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE

A court that determines that a spouse is eligible to receive maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

(1) each spouse's ability to provide for that spouse's minimum reasonable needs independently, considering that spouse's financial resources on dissolution of the marriage;

(2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;

(3) the duration of the marriage;

(4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

(5) the effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;

(6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;

(7) the contribution by one spouse to the education, training, or increased earning power of the other spouse;

(8) the property brought to the marriage by either spouse;

(9) the contribution of a spouse as homemaker;

(10) marital misconduct, including adultery and cruel treatment, by either spouse during the marriage; and

(11) any history or pattern of family violence, as defined by Section 71.004.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.003 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 1, eff. September 1, 2011.

COMMENTS

The Texas legislature amended this section effective September 1, 2011. The amendments made a few minor changes. Notably, the legislature removed subsection (7) of the previous version of the section. Prior subsection (7) stated that a trial court should consider "the comparative financial resources of the spouses, including medical, retirement, insurance or other benefits, and the separate property of each spouse." Also, subsection (11) in the current version of the section added the family violence provision. Finally, the legislature removed subsection (12) of the previous version, which mentioned the Labor Code.

ANNOTATIONS

Alfayoumi v. Alzoubi, No. 13-15-00094-CV, 2017 WL 929482 (Tex. App.—Corpus Christi Mar. 9, 2017, no pet.) (mem. op.). The trial court did not err in awarding spousal maintenance despite the bachelor's degree in nursing the spouse obtained before marriage.

In re L.R.P., No. 05-14-01590-CV, 2016 WL 514174 (Tex. App.—Dallas Feb. 9, 2016, no pet.) (mem. op.). The trial court had no authority to find a spouse in contempt for failure to pay spousal maintenance when the spousal maintenance was reached through private agreement and did not comply with Tex. Fam. Code ch. 8.

McBride v. McBride, No. 09-14-00040-CV, 2016 WL 157764 (Tex. App.—Beaumont Jan. 14, 2016, no pet.) (mem. op.). Social security and disability payments were properly considered in determining an award of spousal maintenance.

Slicker v. Slicker, 464 S.W.3d 850, 863 (Tex. App.—Dallas 2015, no pet.). A trial court acted within its discretion in awarding wife spousal maintenance where evidence showed that she suffered from anxiety and low self-esteem following the parties' 40-year marriage and had limited financial resources, with social security benefits being her sole income source.

Roberts v. Roberts, 402 S.W.3d 833, 841 (Tex. App.—San Antonio 2013, no pet.). An appellate court determined that a remand for recalculation of spousal maintenance award was required, where the cause was already being remanded for just and right division of marital estate, and the spousal maintenance could not be calculated without considering the financial resources of each spouse upon dissolution.

Greco v. Greco, No. 04-07-00748-CV, 2008 WL 4056328 (Tex. App.—San Antonio Aug. 29, 2008, no pet.) (mem. op.). A wife's request for maintenance was denied, even though the parties were married longer than ten years and the wife was making very little money, because the husband presented evidence that the wife had the training, skills, and education to obtain employment and did not have a mental or physical disability. In addition, the trial court found that the parties' children did not require substantial personal supervision or care and that that the marriage ended because of the wife's infidelity.

Smith v. Smith, 115 S.W.3d 303, 308–09 (Tex. App.—Corpus Christi 2003, no pet.). A court awarded spousal maintenance to a husband even though he had some computer skills because his computer skills were not sufficient to gain employment. The court found the husband to be permanently disabled and noted that he would not receive retirement benefits until his former wife retired.

Alaghehband v. Abolbaghaei, No. 03-02-00445-CV, 2003 WL 1986777 (Tex. App.—Austin May 1, 2003, no pet.) (mem. op.). A wife proved that she was entitled to spousal maintenance by showing that she did not have an educational degree that was recognized in the United States, that she had returned to the workforce two and one-half years earlier after an eight-year absence to take care of the parties' autistic child, that she worked part-time in retail sales at $10 per hour, and that she spoke only limited English, all of which prevented her from working full time.

Sec. 8.053. PRESUMPTION

(a) It is a rebuttable presumption that maintenance under Section 8.051(2)(B) is not warranted unless the spouse seeking maintenance has exercised diligence in:

(1) earning sufficient income to provide for the spouse's minimum reasonable needs; or

(2) developing the necessary skills to provide for the spouse's minimum reasonable needs during a period of separation and during the time the suit for dissolution of the marriage is pending.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 486, Sec. 9(1), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.004 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 914 (H.B. 201), Sec. 2, eff. September 1, 2005. Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 2, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 9(1), eff. September 1, 2011.

COMMENTS

In general, there is a presumption that a court should not grant spousal maintenance unless the spouse seeking spousal maintenance has exercised due diligence in seeking employment or in developing the necessary skills required for self-support during the separation and the time the suit for dissolution of marriage is pending. However, if the spouse is unable to seek employment because of an incapacitating mental or physical disability, this presumption

does not apply. The courts determine whether a spouse has overcome the rebuttable presumption against spousal maintenance on a case-by-case basis.

ANNOTATIONS

Alfayoumi v. Alzoubi, No. 13-15-00094-CV, 2017 WL 929482 (Tex. App.—Corpus Christi Mar. 9, 2017, no pet.) (mem. op.). A spouse could have been found to have exercised reasonable diligence in developing skill necessary to meet her minimum reasonable needs when she returned to college to obtain a master's degree.

Baca v. Baca, No. 11-15-00147-CV, 2016 WL 4574473 (Tex. App.—Eastland Aug. 25, 2016, no pet.) (mem. op.). Evidence did not support a finding of spousal maintenance when a spouse failed to exercise diligence in earning sufficient income or developing the skills necessary to meet the spouse's minimum reasonable needs. Property distributed under the Family Code was sufficient to meet the spouse's minimum reasonable needs.

Slicker v. Slicker, 464 S.W.3d 850, 863 (Tex. App.—Dallas 2015, no pet.). A trial court ruled that the wife overcame the presumption against maintenance where the record reflected that, at the time of the divorce, she tried to find a job but had no specific education or employment skills that would facilitate her job search. Further, she had not been in the workplace since 1974 and her only source of income was her social security benefits.

Smallridge v. Smallridge, No. 11-10-00180-CV, 2012 WL 3089355 (Tex. App.—Eastland July 26, 2012, no pet.) (mem. op.). A wife overcame the rebuttable presumption against spousal maintenance by exercising due diligence in seeking suitable employment, looking into online courses, and applying for various full-time work opportunities.

Gordon v. Gordon, No. 14-10-01031-CV, 2011 WL 5926723 (Tex. App.—Houston [14th Dist.] Nov. 29, 2011, no pet.) (mem. op.). A court awarded a wife spousal maintenance when she showed that she had attempted to develop skills necessary to support herself but that her efforts to find employment were impeded by her own and one of her children's frequent medical issues.

Diaz v. Diaz, 350 S.W.3d 251, 254 (Tex. App.—San Antonio 2011, pet. denied). A wife overcame the rebuttable presumption against spousal maintenance because she did not speak English and the earnings from her janitorial business were insufficient to provide for her minimum reasonable needs.

Browne v. Browne, No. 03-08-00185-CV, 2010 WL 1730066 (Tex. App.—Austin Aug. 29, 2010, no pet.) (mem. op.). A court denied a wife spousal maintenance because of the presumption against spousal maintenance, the assets awarded to her in the divorce, and the money she received from a prehearing sale of property.

Owen v. Owen, No. 05-09-00709-CV, 2010 WL 2293465 (Tex. App.—Dallas June 9, 2010, no pet.) (mem. op.). A court awarded a wife spousal maintenance because she had no assets or income and testified that she was disabled.

Coleman v. Coleman, No. 2-09-155-CV, 2009 WL 4755173 (Tex. App.—Fort Worth Dec. 10, 2009, no pet.) (mem. op.). The court of appeals reversed an award of spousal maintenance when the wife seeking spousal maintenance testified merely that she had "looked into" work and had earned $500 during the preceding two years by transporting people, work she had not done for the money.

Greco v. Greco, No. 04-07-00748-CV, 2008 WL 4056328 (Tex. App.—San Antonio Aug. 29, 2008, no pet.) (mem. op.). A wife's request for maintenance was denied, even though the parties were married longer than ten years and the wife was making very little money, because the husband presented evidence that the wife had the training, skills, and education to obtain employment and did not have a mental or physical disability. In addition, the trial court found that the parties' children did not require substantial personal supervision or care and that that the marriage ended because of the wife's infidelity.

Brooks v. Brooks, 257 S.W.3d 418, 426 (Tex. App.—Fort Worth 2008, pet. denied). A wife was awarded spousal maintenance based on an incapacitating physical disability after testifying that she had osteoporosis and disc problems and that she could not work because the osteoporosis was so severe that she was at risk of breaking her bones.

Chafino v. Chafino, 228 S.W.3d 467, 474–75 (Tex. App.—El Paso 2007, no pet.). A spouse seeking spousal maintenance must meet certain requirements. A wife was not entitled to spousal maintenance because she failed to prove that her medical needs prevented her from obtaining employment. Moreover, the trial court awarded the wife over 70 percent of the marital estate.

In re Marriage of Gonzalez, No. 07-05-0205-CV, 2006 WL 3102303 (Tex. App.—Amarillo Nov. 2, 2006, no pet.) (mem. op.). A wife received an award of spousal maintenance because she progressed from part-time to full-time employment during the pendency of the divorce proceeding and exercised diligence in seeking suitable employment.

In re Marriage of Eilers, 205 S.W.3d 637, 646–47 (Tex. App.—Waco 2006, pet. denied). A wife overcame the presumption against spousal maintenance by introducing evidence that she had exercised diligence in trying to find suitable employment but had been unsuccessful.

Stucki v. Stucki, 222 S.W.3d 116, 120 (Tex. App.—Tyler 2006, no pet.). A court did not award a wife spousal maintenance because she received half the husband's insurance renewal commissions in the parties' divorce and she had the skills to find employment.

In re Marriage of McFarland, 176 S.W.3d 650, 650 (Tex. App.—Texarkana 2005, no pet.). A court awarded spousal maintenance to a wife because she lacked the ability to provide for her minimum reasonable needs in the labor market.

Yarbrough v. Yarbrough, 151 S.W.3d 687, 691 (Tex. App.—Waco 2004, no pet.). The disability of the parties' child entitled a wife to receive spousal maintenance because taking care of the child prevented the wife from obtaining employment.

Sheshtawy v. Sheshtawy, 150 S.W.3d 772, 777–78 (Tex. App.—San Antonio 2004, pet. denied), cert. denied, 546 U.S. 823 (2005). A trial court abused its discretion in awarding spousal maintenance when the wife failed to present any evidence that spousal maintenance was warranted.

Pettry v. Pettry, No. 09-04-113-CV, 2004 WL 1902552 (Tex. App.—Beaumont Aug. 26, 2004, no pet.) (mem. op.). A court awarded spousal maintenance to a wife based on evidence of her incapacitating physical disability.

Stone v. Stone, 119 S.W.3d 866, 869–70 (Tex. App.—Eastland 2003, no pet.). A court awarded a wife spousal maintenance because she introduced evidence at trial that she lacked income and property to support her minimum reasonable needs.

Smith v. Smith, 115 S.W.3d 303, 308–09 (Tex. App.—Corpus Christi 2003, no pet.). A court awarded spousal maintenance to a husband even though he had some computer skills because his computer skills were not sufficient to gain employment. The court found the husband to be permanently disabled and noted that he would not receive retirement benefits until his former wife retired.

Tomlinson v. Tomlinson, No. 13-02-00105-CV, 2003 WL 751177 (Tex. App.—Corpus Christi Mar. 6, 2003, no pet.) (mem. op.). A court did not abuse its discretion by awarding spousal maintenance to a wife because of her incapacitating physical and mental disabilities. Further, the award did not exceed 20 percent of the husband's average gross monthly income.

Sec. 8.054. DURATION OF MAINTENANCE ORDER

(a) Except as provided by Subsection (b), a court:

(1) may not order maintenance that remains in effect for more than:

(A) five years after the date of the order, if:

(i) the spouses were married to each other for less than 10 years and the eligibility of the spouse for whom maintenance is ordered is established under Section 8.051(1); or

(ii) the spouses were married to each other for at least 10 years but not more than 20 years;

(B) seven years after the date of the order, if the spouses were married to each other for at least 20 years but not more than 30 years; or

(C) 10 years after the date of the order, if the spouses were married to each other for 30 years or more; and

(2) shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to earn sufficient income to provide for the

spouse's minimum reasonable needs, unless the ability of the spouse to provide for the spouse's minimum reasonable needs is substantially or totally diminished because of:

(A) physical or mental disability of the spouse seeking maintenance;

(B) duties as the custodian of an infant or young child of the marriage; or

(C) another compelling impediment to earning sufficient income to provide for the spouse's minimum reasonable needs.

(b) The court may order maintenance for a spouse to whom Section 8.051(2)(A) or (C) applies for as long as the spouse continues to satisfy the eligibility criteria prescribed by the applicable provision.

(c) On the request of either party or on the court's own motion, the court may order the periodic review of its order for maintenance under Subsection (b).

(d) The continuation of maintenance ordered under Subsection (b) is subject to a motion to modify as provided by Section 8.057.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.005 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 914 (H.B. 201), Sec. 3, eff. September 1, 2005. Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 3, eff. September 1, 2011.

COMMENTS

This section underwent significant changes effective September 1, 2011. Under the previous version (effective from September 1, 2005, to August 31, 2011), a spouse could receive spousal maintenance for a maximum period of three years if the trial court determined (1) that the spouse could not provide for the spouse's "minimum reasonable needs through employment" that was "substantially or totally diminished" due to "a physical or mental disability," (2) that the spouse was the custodian of an infant or young child, or (3) that there was "another compelling impediment." The statute also permitted a trial court to order spousal maintenance for longer than three years if the spouse seeking spousal maintenance had a physical or mental disability. The current version created longer periods for an award of spousal maintenance, depending on how long the parties were married, while still keeping the provision permitting a trial court to order spousal maintenance for a longer period if the spouse has an incapacitating disability. Specifically, a trial court may order spousal maintenance for a maximum of five years if the couple was married for between ten and twenty years or if the requirements of section 8.051 are satisfied. A trial court may order spousal maintenance for seven years if the couple was married between twenty and thirty years. Finally, a trial court may award spousal maintenance for ten years if the couple was married for thirty or more years. The rest of the current version of this section remained relatively unchanged.

Because of the stark differences between the current and former versions of this section, only the cases that apply the new provisions were added to the annotations section below.

ANNOTATIONS

Roberts v. Roberts, 531 S.W.3d 224 (Tex. App.—San Antonio 2017, pet. denied). A spouse's subjective testimony alone, without a connection to a certain disability or condition, was not sufficient to establish a mental or physical disability that would preclude her from obtaining or maintaining gainful employment.

Wiedenfeld v. Markgraf, No. 04-16-00172-CV, 2017 WL 685762 (Tex. App.—San Antonio Feb. 22, 2017, no pet.). The trial court did not abuse its discretion in failing to continue spousal maintenance when evidence existed that the receiving spouse did not have a debilitating condition that precluded gainful employment.

In re L.R.P., No. 05-14-01590-CV, 2016 WL 514174 (Tex. App.—Dallas Feb. 9, 2016, no pet.) (mem. op.). The trial court had no authority to find a spouse in contempt for failure to pay spousal maintenance when the spousal maintenance was reached through private agreement and did not comply with Tex. Fam. Code ch. 8.

Novick v. Shervin, 412 S.W.3d 825, 831 (Tex. App.—Dallas 2013, no pet.). Spousal maintenance originally ordered in a divorce decree could not be brought by a motion for continuation where the language of the divorce decree indicated that the trial court intended to make the award pursuant to subsection 8.054(a), rather than 8.054(b).

O'Carolan v. Hopper, 414 S.W.3d 288, 309 (Tex. App.—Austin 2013, no pet.). Trial court's order of spousal maintenance was not subject to continuation where the trial court did not explicitly state that the order would be subject to review under subsection 8.054(b) for continuation of maintenance or make any specific findings that the appellant had an incapacitating physical or mental disability.

Turner v. Turner, No. 11-10-00192-CV, 2012 WL 3115155 (Tex. App.—Eastland July 31, 2012, pet. denied) (mem. op.). An award of spousal maintenance was limited to a period of three years when the decree did not state how long spousal maintenance must be paid.

Heller v. Heller, 359 S.W.3d 902, 905 (Tex. App.—Beaumont 2012, no pet.). An award of spousal maintenance must be limited in duration except when a spouse proves a physical or mental disability.

Tellez v. Tellez, 345 S.W.3d 689, 693 (Tex. App.—Dallas 2011, no pet.). The trial court did not abuse its discretion in denying the wife's application for indefinite spousal maintenance. Although the wife testified that she had numerous health issues, including asthma, diabetes, hypertension, allergies, and severe depression, there was no evidence that she was incapacitated or disabled, and there was no evidence that she was precluded from working.

Sec. 8.055. AMOUNT OF MAINTENANCE

(a) A court may not order maintenance that requires an obligor to pay monthly more than the lesser of:

(1) $5,000; or

(2) 20 percent of the spouse's average monthly gross income.

(b) For purposes of this chapter, gross income:

(1) includes:

(A) 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses);

(B) interest, dividends, and royalty income;

(C) self-employment income;

(D) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation); and

(E) all other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, unemployment benefits, interest income from notes regardless of the source, gifts and prizes, maintenance, and alimony; and

(2) does not include:

(A) return of principal or capital;

(B) accounts receivable;

(C) benefits paid in accordance with federal public assistance programs;

(D) benefits paid in accordance with the Temporary Assistance for Needy Families program;

(E) payments for foster care of a child;

(F) Department of Veterans Affairs service-connected disability compensation;

(G) supplemental security income (SSI), social security benefits, and disability benefits; or

(H) workers' compensation benefits.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 486, Sec. 9(2), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 486, Sec. 9(2), eff. September 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 486, Sec. 9(2), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.006 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1138, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 4, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 9(2), eff. September 1, 2011.

COMMENTS

This section underwent major changes, effective September 1, 2011. The legislature amended subsection 8.055(a)(1), regarding the amount an obligor can be required to pay monthly, to increase the amount from $2,500 to $5,000. In addition, the current version did away with subsection 8.055(d) of the previous version. Instead, the section now spells out what does and does not constitute "gross income" in subsection 8.055(a–1).

In the previous version, this section contained a provision for the trial court to set the amount an obligor was required to pay the obligee for the obligee's minimum reasonable needs. One subsection, which required the court to consider employment or property received in the dissolution of the marriage or owned by the obligee, was repealed. Finally, the previous version provided that certain Department of Veterans Affairs service–connected benefits were excluded from maintenance. This provision was also repealed in 2011.

ANNOTATIONS

Mathis v. Mathis, No. 12-17-00049-CV, 2018 WL 1324777 (Tex. App.—Tyler Mar. 15, 2018, no pet.) (mem. op.). There must be evidence that the obligor has the ability to earn income to satisfy a spousal maintenance obligation.

McBride v. McBride, No. 09-14-00040-CV, 2016 WL 157764 (Tex. App.—Beaumont Jan. 14, 2016, no pet.) (mem. op.). Statutory authorization of spousal maintenance only establishes a maximum obligation. After consideration of a spouse's social security and disability payments, the amount of the trial court's award of spousal maintenance was appropriate.

Heller v. Heller, 359 S.W.3d 902, 903–04 (Tex. App.—Beaumont 2012, no pet.). Spousal maintenance is defined as periodic payments from the future income of one spouse for the support of the other spouse. The parties' divorce decree did not specify that the payments were spousal maintenance or order the ex-husband to make them. The record reflected a traditional alimony promise, not an award of spousal maintenance.

Yasin v. Yasin, No. 03-10-00774-CV, 2011 WL 5009895 (Tex. App.—Austin Oct. 21, 2011, no pet.) (mem. op.). A trial court did not abuse its discretion when it awarded spousal maintenance of $1,300 per month based on a presumed finding that the obligor's average monthly wages were at least $5,200 per month.

Tellez v. Tellez, 345 S.W.3d 689, 692 (Tex. App.—Dallas 2011, no pet.). A trial court did not abuse its discretion in awarding monthly spousal maintenance that was within the statutory guidelines.

Giesler v. Giesler, No. 03-08-00734-CV, 2010 WL 2330362 (Tex. App.—Austin June 10, 2010, no pet.) (mem. op.). A spousal maintenance award in excess of the statutory limits is an abuse of discretion.

Stoufflet v. Stoufflet, No. 03-08-00003-CV, 2009 WL 722280 (Tex. App.—Austin Mar. 20, 2009, no pet.) (mem. op.). A trial court did not abuse its discretion when it awarded spousal maintenance in an amount $100 less per month than the maximum amount allowed by statute.

In re Marriage of Gonzalez, No. 07-05-0205-CV, 2006 WL 3102303 (Tex. App.—Amarillo Nov. 2, 2006, no pet.) (mem. op.). A wife received an award of spousal maintenance because she progressed from part-time to full-time employment during the pendency of the divorce proceeding and exercised diligence in seeking suitable employment.

Marquez v. Marquez, No. 04-04-00771-CV, 2006 WL 1152235 (Tex. App.—San Antonio May 3, 2006, no pet.) (mem. op.). A trial court did not abuse its discretion in lowering the amount of a husband's spousal maintenance payments to his wife when the husband's income declined after his employer laid him off and he was then fired from another job because he was arrested for failing to pay child support.

In re Marriage of Graves, No. 06-03-00003-CV, 2003 WL 22053096 (Tex. App.—Texarkana Sept. 3, 2003, no pet.) (mem. op.). A trial court did not abuse its discretion in setting the amount of spousal maintenance at 20 percent of the husband's monthly income.

Tomlinson v. Tomlinson, No. 13-02-00105-CV, 2003 WL 751177 (Tex. App.—Corpus Christi Mar. 6, 2003, no pet.) (mem. op.). A court did not abuse its discretion by awarding spousal maintenance to a wife because of her incapacitating physical and mental disabilities. Further, the award did not exceed 20 percent of the husband's average gross monthly income.

Amos v. Amos, 79 S.W.3d 747, 750 (Tex. App.—Corpus Christi 2002, no pet.). A court awarded spousal maintenance to a wife who had severe carpal tunnel syndrome that required her to take frequent breaks and inhibited her ability to work.

O'Carolan v. Hopper, 71 S.W.3d 529, 534–35 (Tex. App.—Austin 2002, no pet.). A spousal maintenance award that exceeded 20 percent of the husband's average gross monthly income was manifestly unfair.

Sec. 8.056. TERMINATION

(a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the obligee.

(b) After a hearing, the court shall order the termination of the maintenance obligation if the court finds that the obligee cohabits with another person with whom the obligee has a dating or romantic relationship in a permanent place of abode on a continuing basis.

(c) Termination of the maintenance obligation does not terminate the obligation to pay any maintenance that accrued before the date of termination, whether as a result of death or remarriage under Subsection (a) or a court order under Subsection (b).

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.007 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 5, eff. September 1, 2011.

COMMENTS

This section underwent changes during the 2011 legislative session. The legislature amended subsection 8.605(b), which formerly provided for termination of spousal maintenance based on cohabitation in a permanent place of abode on a continuing conjugal basis, to terminating spousal maintenance based on cohabitation on a permanent basis with another person with whom the obligee has a dating or romantic relationship. The legislature also added subsection 8.056(c), which provides that this section does not terminate obligations to pay spousal maintenance that accrued before the date of termination.

ANNOTATIONS

Waldrop v. Waldrop, 552 S.W.3d 396 (Tex. App.—Fort Worth 2018, no pet.) (en banc op. no reh'g). An agreement for purely contractual maintenance is not subject to the termination provisions of Family Code chapter 8, notwithstanding references in the divorce decree to chapter 8 and stating that wife was entitled to maintenance in accordance therewith and to "all rights and remedies afforded under [chapter 8 of the Family Code]." The parties' divorce decree for maintenance exceeded the proscribed limits of chapter 8 maintenance at the time the decree was signed; thus, the decree's allowance for the termination of the obligation on "further orders of the court" permitting ex-husband to seek modification or termination of the obligation was permissible.

Heller v. Heller, 359 S.W.3d 902, 903–04 (Tex. App.—Beaumont 2012, no pet.). Spousal maintenance is defined as periodic payments from the future income of one spouse for the support of the other spouse. The parties' divorce decree did not specify that the payments were spousal maintenance or order the ex-husband to make them. The record reflected a traditional alimony promise, not an award of spousal maintenance.

Kee v. Kee, 307 S.W.3d 812, 813 (Tex. App.—Dallas 2010, pet. denied). The Family Code does not apply in cases of contractual alimony. Because a divorce decree specified that the ex-husband would pay alimony and failed to men-

tion the Family Code or spousal maintenance, the spousal maintenance provisions of the Family Code did not apply. Also, spousal maintenance must terminate if the party receiving maintenance remarries.

Brooks v. Brooks, 257 S.W.3d 418, 426 (Tex. App.—Fort Worth 2008, pet. denied). The court of appeals upheld an award of spousal maintenance to a wife because of her incapacitating physical disability. The court noted that spousal maintenance must terminate on the death of either party, the remarriage of the party receiving spousal maintenance, or cohabitation by the obligee.

McCollough v. McCollough, 212 S.W.3d 638, 648 (Tex. App.—Austin 2006, no pet.). The termination provisions of this section did not apply to a husband's alimony obligation.

Sec. 8.057. MODIFICATION OF MAINTENANCE ORDER

(a) The amount of maintenance specified in a court order or the portion of a decree that provides for the support of a former spouse may be reduced by the filing of a motion in the court that originally rendered the order. A party affected by the order or the portion of the decree to be modified may file the motion.

(b) Notice of a motion to modify maintenance and the response, if any, are governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Notice must be given by service of citation, and a response must be in the form of an answer due on or before 10 a.m. of the first Monday after 20 days after the date of service. A court shall set a hearing on the motion in the manner provided by Rule 245, Texas Rules of Civil Procedure.

(c) After a hearing, the court may modify an original or modified order or portion of a decree providing for maintenance on a proper showing of a material and substantial change in circumstances, including circumstances reflected in the factors specified in Section 8.052, relating to either party or to a child of the marriage described by Section 8.051(2)(C), if applicable. The court shall apply the modification only to payment accruing after the filing of the motion to modify.

(d) A loss of employment or circumstances that render a former spouse unable to provide for the spouse's minimum reasonable needs by reason of incapacitating physical or mental disability that occur after the divorce or annulment are not grounds for the institution of spousal maintenance for the benefit of the former spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.008 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 6, eff. September 1, 2011.

COMMENTS

The legislature made only one minor change to this section in 2011. It added a provision to subsection 8.057(c) permitting modification of spousal maintenance when there had been a "substantial change in circumstance, including circumstances reflected in the factors specified in Section 8.052, relating to either party or to a child of the marriage described by Section 8.051(2)(C)."

ANNOTATIONS

Hackenjos v. Hackenjos, 204 S.W.3d 906, 910 (Tex. App.—Dallas 2011, no pet.). This section allows a trial court to modify an award of spousal maintenance based on an incapacitating physical disability for an indefinite period of time as long as the disability continues.

Crane v. Crane, 188 S.W.3d 276, 280 (Tex. App.—Fort Worth 2006, pet. denied). An obligor who receives spousal maintenance based on an incapacitating disability need not prove a change of circumstances to modify the award of spousal maintenance by extending its term.

In re Marriage of Lendman, 170 S.W.3d 894, 899–900 (Tex. App.—Texarkana 2005, no pet.). When deciding a request for modification of spousal maintenance, a trial court must compare the parties' financial circumstances as of the date of divorce with their circumstances at the time the modification is sought.

O'Carolan v. Hopper, 71 S.W.3d 529, 534 (Tex. App.—Austin 2002, no pet.). An award of graduated spousal maintenance, which increased to more than 20 percent of the obligor's income during the last three months of the award, was subject to modification because an award of spousal maintenance may not exceed 20 percent of the obligor's monthly gross income.

Sec. 8.058. MAINTENANCE ARREARAGES

A spousal maintenance payment not timely made constitutes an arrearage.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

ANNOTATIONS

Palmer v. Palmer, No. 02-11-00098-CV, 2012 WL 1130417 (Tex. App.—Fort Worth Apr. 5, 2012, no pet.) (mem. op.). Attorney's fees may not be included as arrearages in an income-withholding order for spousal maintenance.

Sec. 8.059. ENFORCEMENT OF MAINTENANCE ORDER

(a) The court may enforce by contempt against the obligor:

(1) the court's maintenance order; or

(2) an agreement for periodic payments of spousal maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court.

(a–1) The court may not enforce by contempt any provision of an agreed order for maintenance that exceeds the amount of periodic support the court could have ordered under this chapter or for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

(b) On the suit to enforce by an obligee, the court may render judgment against a defaulting party for the amount of arrearages after notice by service of citation, answer, if any, and a hearing finding that the defaulting party has failed or refused to comply with the terms of the order. The judgment may be enforced by any means available for the enforcement of judgment for debts.

(c) It is an affirmative defense to an allegation of contempt of court or the violation of a condition of probation requiring payment of court-ordered maintenance that the obligor:

(1) lacked the ability to provide maintenance in the amount ordered;

(2) lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

(3) attempted unsuccessfully to borrow the needed funds; and

(4) did not know of a source from which the money could have been borrowed or otherwise legally obtained.

(d) The issue of the existence of an affirmative defense does not arise until pleaded. An obligor must prove the affirmative defense by a preponderance of the evidence.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 486, Sec. 9(3), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.009 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B.

901), Sec. 7, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 9(3), eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 242 (H.B. 389), Sec. 3, eff. September 1, 2013.

COMMENTS

This section underwent minor changes in the 2011 legislative session. The first addition to the section is under subsection 8.059(a) wherein the court is not permitted to enforce an award of spousal maintenance by contempt for a period longer than the duration of the order. Also, while subsection 8.059(d) changed the wording, the burden of proof for an affirmative defense is still a preponderance of the evidence standard. Finally, subsection 8.059(e), which allowed the court to garnish the wages of the obligor, was repealed.

In 2013, the legislature amended subsection 8.059(a–1) to restrict a court's power to enforce agreed maintenance awards in excess of the amount of periodic support the trial court could have ordered.

The cases below were decided under the version of the statute in effect before the 2011 amendments, which permitted the court to enforce a spousal maintenance award by contempt.

ANNOTATIONS

In re L.R.P., No. 05-14-01590-CV, 2016 WL 514174 (Tex. App.—Dallas Feb. 9, 2016, no pet.) (mem. op.). The trial court had no authority to find a spouse in contempt for failure to pay spousal maintenance when the spousal maintenance was reached through private agreement and did not comply with Tex. Fam. Code ch. 8.

Bailey v. Bailey, No. 07-14-00158-CV, 2016 WL 638058 (Tex. App.—Amarillo Feb. 5, 2016, no pet.) (mem. op.). The trial court's decision garnishing the wages of a spouse for the payment of spousal maintenance was proper given the private agreement was "entered into the parties and approved by the court."

In re Taylor, 130 S.W.3d 448, 450 (Tex. App.—Texarkana 2004, orig. proceeding). A spousal maintenance award may be enforced by contempt.

In re Sheshtawy, 161 S.W.3d 1, 2 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding) (mem. op.) (per curiam). The Family Code allows a trial court to enforce a spousal maintenance award during the pendency of an appeal of that award.

In re Dupree, 118 S.W.3d 911, 916 (Tex. App.—Dallas 2003, orig. proceeding). An award of contractual alimony (as opposed to spousal maintenance) is not enforceable by contempt.

Sec. 8.0591. OVERPAYMENT

(a) If an obligor is not in arrears on the obligor's maintenance obligation and the obligor's maintenance obligation has terminated, the obligee must return to the obligor any maintenance payment made by the obligor that exceeds the amount of maintenance ordered or approved by the court, regardless of whether the payment was made before, on, or after the date the maintenance obligation terminated.

(b) An obligor may file a suit to recover overpaid maintenance under Subsection (a). If the court finds that the obligee failed to return overpaid maintenance under Subsection (a), the court shall order the obligee to pay the obligor's attorney's fees and all court costs in addition to the amount of the overpaid maintenance. For good cause shown, the court may waive the requirement that the obligee pay attorney's fees and court costs if the court states in its order the reasons supporting that finding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 486 (H.B. 901), Sec. 8, eff. September 1, 2011.

Sec. 8.060. PUTATIVE SPOUSE

In a suit to declare a marriage void, a putative spouse who did not have knowledge of an existing impediment to a valid marriage may be awarded maintenance if otherwise qualified to receive maintenance under this chapter.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.010 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.061. UNMARRIED COHABITANTS

An order for maintenance is not authorized between unmarried cohabitants under any circumstances.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.011 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. INCOME WITHHOLDING

Sec. 8.101. INCOME WITHHOLDING; GENERAL RULE

(a) In a proceeding in which periodic payments of spousal maintenance are ordered, modified, or enforced, the court may order that income be withheld from the disposable earnings of the obligor as provided by this chapter.

(a–1) The court may order that income be withheld from the disposable earnings of the obligor in a proceeding in which there is an agreement for periodic payments of spousal maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court.

(a–2) The court may not order that income be withheld from the disposable earnings of the obligor to the extent that any provision of an agreed order for maintenance exceeds the amount of periodic support the court could have ordered under this chapter or for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

(b) This subchapter does not apply to contractual alimony or spousal maintenance, regardless of whether the alimony or maintenance is taxable, unless:

(1) the contract specifically permits income withholding; or

(2) the alimony or maintenance payments are not timely made under the terms of the contract.

(c) An order or writ of withholding for spousal maintenance may be combined with an order or writ of withholding for child support only if the obligee has been appointed managing conservator of the child for whom the child support is owed and is the conservator with whom the child primarily resides.

(d) An order or writ of withholding that combines withholding for spousal maintenance and child support must:

(1) require that the withheld amounts be paid to the appropriate place of payment under Section 154.004;

(2) be in the form prescribed by the Title IV-D agency under Section 158.106;

(3) clearly indicate the amounts withheld that are to be applied to current spousal maintenance and to any maintenance arrearages; and

(4) subject to the maximum withholding allowed under Section 8.106, order that withheld income be applied in the following order of priority:

(A) current child support;

(B) current spousal maintenance;

(C) child support arrearages; and

(D) spousal maintenance arrearages.

(e) Garnishment for the purposes of spousal maintenance does not apply to unemployment insurance benefit payments.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 242 (H.B. 389), Sec. 4, eff. September 1, 2013.

ANNOTATIONS

Dalton v. Dalton, 551 S.W.3d 126 (Tex. 2018). A Texas trial court cannot use court-ordered wage withholding to enforce a voluntary support obligation that does not qualify as spousal maintenance under Family Code chapter 8 unless the parties specifically agree to that enforcement method.

Holland v. Holland, 357 S.W.3d 192, 199 (Tex. App.—Dallas 2012, no pet.). Although a trial court had jurisdiction to sign a withholding order to enforce a divorce decree, the withholding order signed was not consistent with the divorce decree because it ordered withholding for spousal maintenance to enforce a contractual alimony obligation.

Heller v. Heller, 359 S.W.3d 902, 905 (Tex. App.—Beaumont 2012, no pet.). A court may not enter a wage-withholding order to enforce contractual alimony.

Kee v. Kee, 307 S.W.3d 812, 816 (Tex. App.—Dallas 2010, pet. denied). A contractual alimony provision in a divorce decree did not and could not provide for enforcement by income withholding. Thus, income withholding was not an available remedy.

Sec. 8.102. WITHHOLDING FOR ARREARAGES IN ADDITION TO CURRENT SPOUSAL MAINTENANCE

(a) The court may order that, in addition to income withheld for current spousal maintenance, income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any arrearages.

(b) The additional amount withheld to be applied toward arrearages must be whichever of the following amounts will discharge the arrearages in the least amount of time:

(1) an amount sufficient to discharge the arrearages in not more than two years; or

(2) 20 percent of the amount withheld for current maintenance.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.103. WITHHOLDING FOR ARREARAGES WHEN CURRENT MAINTENANCE IS NOT DUE

A court may order income withholding to be applied toward arrearages in an amount sufficient to discharge those arrearages in not more than two years if current spousal maintenance is no longer owed.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.104. WITHHOLDING TO SATISFY JUDGMENT FOR ARREARAGES

The court, in rendering a cumulative judgment for arrearages, may order that a reasonable amount of income be withheld from the disposable earnings of the obligor to be applied toward the satisfaction of the judgment.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.105. PRIORITY OF WITHHOLDING

An order or writ of withholding under this chapter has priority over any garnishment, attachment, execution, or other order affecting disposable earnings, except for an order or writ of withholding for child support under Chapter 158.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.106. MAXIMUM AMOUNT WITHHELD FROM EARNINGS

An order or writ of withholding must direct that an obligor's employer withhold from the obligor's disposable earnings the lesser of:

(1) the amount specified in the order or writ; or

(2) an amount that, when added to the amount of income being withheld by the employer for child support, is equal to 50 percent of the obligor's disposable earnings.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.107. ORDER OR WRIT BINDING ON EMPLOYER DOING BUSINESS IN THIS STATE

An order or writ of withholding issued under this chapter and delivered to an employer doing business in this state is binding on the employer without regard to whether the obligor resides or works outside this state.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.108. VOLUNTARY WRIT OF WITHHOLDING BY OBLIGOR

(a) An obligor may file with the clerk of the court a notarized or acknowledged request signed by the obligor and the obligee for the issuance and delivery to the obligor's employer of a writ of withholding. The obligor may file the request under this section regardless of whether a writ or order has been served on any party or whether the obligor owes arrearages.

(b) On receipt of a request under this section, the clerk shall issue and deliver a writ of withholding in the manner provided by this subchapter.

(c) An employer who receives a writ of withholding issued under this section may request a hearing in the same manner and according to the same terms provided by Section 8.205.

(d) An obligor whose employer receives a writ of withholding issued under this section may request a hearing in the manner provided by Section 8.258.

(e) An obligee may contest a writ of income withholding issued under this section by requesting, not later than the 180th day after the date on which the obligee discovers that the writ was issued, a hearing to be conducted in the manner provided by Section 8.258 for a hearing on a motion to stay.

(f) A writ of withholding under this section may not reduce the total amount of spousal maintenance, including arrearages, owed by the obligor.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. PROCEDURE

Sec. 8.151. TIME LIMIT

The court may issue an order or writ for withholding under this chapter at any time before all spousal maintenance and arrearages are paid.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.152. CONTENTS OF ORDER OF WITHHOLDING

(a) An order of withholding must state:

(1) the style, cause number, and court having jurisdiction to enforce the order;

(2) the name, address, and, if available, the social security number of the obligor;

(3) the amount and duration of the spousal maintenance payments, including the amount and duration of withholding for arrearages, if any; and

(4) the name, address, and, if available, the social security number of the obligee.

(b) The order for withholding must require the obligor to notify the court promptly of any material change affecting the order, including a change of employer.

(c) On request by an obligee, the court may exclude from an order of withholding the obligee's address and social security number if the obligee or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject. On granting a request under this subsection, the court shall order the clerk to:

(1) strike the address and social security number required by Subsection (a) from the order or writ of withholding; and

(2) maintain a confidential record of the obligee's address and social security number to be used only by the court.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.153. REQUEST FOR ISSUANCE OF ORDER OR WRIT OF WITHHOLDING

An obligor or obligee may file with the clerk of the court a request for issuance of an order or writ of withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.154. ISSUANCE AND DELIVERY OF ORDER OR WRIT OF WITHHOLDING

(a) On receipt of a request for issuance of an order or writ of withholding, the clerk of the court shall deliver a certified copy of the order or writ to the obligor's current employer or to any subsequent employer of the obligor. The clerk shall attach a copy of Subchapter E to the order or writ.

(b) Not later than the fourth working day after the date the order is signed or the request is filed, whichever is later, the clerk shall issue and deliver the certified copy of the order or writ by:

(1) certified or registered mail, return receipt requested, to the employer; or

(2) service of citation to:

(A) the person authorized to receive service of process for the employer in civil cases generally; or

(B) a person designated by the employer by written notice to the clerk to receive orders or notices of income withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER E. RIGHTS AND DUTIES OF EMPLOYER

Sec. 8.201. ORDER OR WRIT BINDING ON EMPLOYER

(a) An employer required to withhold income from earnings under this chapter is not entitled to notice of the proceedings before the order of withholding is rendered or writ of withholding is issued.

(b) An order or writ of withholding is binding on an employer regardless of whether the employer is specifically named in the order or writ.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.202. EFFECTIVE DATE AND DURATION OF INCOME WITHHOLDING

An employer shall begin to withhold income in accordance with an order or writ of withholding not later than the first pay period after the date the order or writ was delivered to the employer. The employer shall continue to withhold income as required by the order or writ as long as the obligor is employed by the employer.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.203. REMITTING WITHHELD PAYMENTS

(a) The employer shall remit to the person or office named in the order or writ of withholding the amount of income withheld from an obligor on each pay date. The remittance must include the date on which the income withholding occurred.

(b) The employer shall include with each remittance:

(1) the cause number of the suit under which income withholding is required;

(2) the payor's name; and

(3) the payee's name, unless the remittance is made by electronic funds transfer.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.204. EMPLOYER MAY DEDUCT FEE FROM EARNINGS

An employer may deduct an administrative fee of not more than $5 each month from the obligor's disposable earnings in addition to the amount withheld as spousal maintenance.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.205. HEARING REQUESTED BY EMPLOYER

(a) Not later than the 20th day after the date an order or writ of withholding is delivered to an employer, the employer may file with the court a motion for a hearing on the applicability of the order or writ to the employer.

(b) The hearing under this section must be held on or before the 15th day after the date the motion is made.

(c) An order or writ of withholding is binding and the employer shall continue to withhold income and remit the amount withheld pending further order of the court.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.206. LIABILITY AND OBLIGATION OF EMPLOYER FOR PAYMENTS

(a) An employer who complies with an order or writ of withholding under this chapter is not liable to the obligor for the amount of income withheld and remitted as required by the order or writ.

(b) An employer who receives, but does not comply with, an order or writ of withholding is liable to:

(1) the obligee for any amount of spousal maintenance not paid in compliance with the order or writ;

(2) the obligor for any amount withheld from the obligor's disposable earnings, but not remitted to the obligee; and

(3) the obligee or obligor for reasonable attorney's fees and court costs incurred in recovering an amount described by Subdivision (1) or (2).

(c) An employer shall comply with an order of withholding for spousal maintenance or alimony issued in another state that appears regular on its face in the same manner as an order issued by a tribunal of this state. The employer shall notify the employee of the order and comply with the order in the manner provided by Subchapter F, Chapter 159, with respect to an order of withholding for child support issued by another state. The employer may contest the order of withholding in the manner provided by that subchapter with respect to an order of withholding for child support issued by another state.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.207. EMPLOYER RECEIVING MULTIPLE ORDERS OR WRITS

(a) An employer who receives more than one order or writ of withholding to withhold income from the same obligor shall withhold the combined amounts due under each order or writ unless the combined amounts due exceed the maximum total amount of allowed income withholding under Section 8.106.

(b) If the combined amounts to be withheld under multiple orders or writs for the same obligor exceed the maximum total amount of allowed income withholding under Section 8.106, the employer shall pay, until that maximum is reached, in the following order of priority:

(1) an equal amount toward current child support owed by the obligor in each order or writ until the employer has complied fully with each current child support obligation;

(2) an equal amount toward current maintenance owed by the obligor in each order or writ until the employer has complied fully with each current maintenance obligation;

(3) an equal amount toward child support arrearages owed by the obligor in each order or writ until the employer has complied fully with each order or writ for child support arrearages; and

(4) an equal amount toward maintenance arrearages owed by the obligor in each order or writ until the employer has complied fully with each order or writ for spousal maintenance arrearages.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.208. EMPLOYER'S LIABILITY FOR DISCRIMINATORY HIRING OR DISCHARGE

(a) An employer may not use an order or writ of withholding as grounds in whole or part for the termination of employment of, or for any other disciplinary action against, an employee.

(b) An employer may not refuse to hire an employee because of an order or writ of withholding.

(c) An employer who intentionally discharges an employee in violation of this section is liable to that employee for current wages, other employment benefits, and reasonable attorney's fees and court costs incurred in enforcing the employee's rights.

(d) In addition to liability imposed under Subsection (c), the court shall order with respect to an employee whose employment was suspended or terminated in violation of this section appropriate injunctive relief, including reinstatement of:

(1) the employee's position with the employer; and

(2) fringe benefits or seniority lost as a result of the suspension or termination.

(e) An employee may bring an action to enforce the employee's rights under this section.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.209. PENALTY FOR NONCOMPLIANCE

(a) In addition to the civil remedies provided by this subchapter or any other remedy provided by law, an employer who knowingly violates this chapter by failing to withhold income for spousal maintenance or to remit withheld income in accordance with an order or writ of withholding issued under this chapter commits an offense.

(b) An offense under this section is punishable by a fine not to exceed $200 for each violation.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.210. NOTICE OF TERMINATION OF EMPLOYMENT AND OF NEW EMPLOYMENT

(a) An obligor who terminates employment with an employer who has been withholding income and the obligor's employer shall each notify the court and the obligee of:

(1) the termination of employment not later than the seventh day after the date of termination;

(2) the obligor's last known address; and

(3) the name and address of the obligor's new employer, if known.

(b) The obligor shall inform a subsequent employer of the order or writ of withholding after obtaining employment.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER F. WRIT OF WITHHOLDING ISSUED BY CLERK

Sec. 8.251. NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING; FILING

(a) An obligor or obligee may file a notice of application for a writ of withholding if income withholding was not ordered at the time spousal maintenance was ordered.

(b) The obligor or obligee may file the notice of application for a writ of withholding in the court that ordered the spousal maintenance under Subchapter B.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.252. CONTENTS OF NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING

The notice of application for a writ of withholding must be verified and:

(1) state the amount of monthly maintenance due, including the amount of arrearages or anticipated arrearages, and the amount of disposable earnings to be withheld under a writ of withholding;

(2) state that the withholding applies to each current or subsequent employer or period of employment;

(3) state that the obligor's employer will be notified to begin the withholding if the obligor does not contest the withholding on or before the 10th day after the date the obligor receives the notice;

(4) describe the procedures for contesting the issuance and delivery of a writ of withholding;

(5) state that the obligor will be provided an opportunity for a hearing not later than the 30th day after the date of receipt of the notice of contest if the obligor contests the withholding;

(6) state that the sole ground for successfully contesting the issuance of a writ of withholding is a dispute concerning the identity of the obligor or the existence or amount of the arrearages;

(7) describe the actions that may be taken if the obligor contests the notice of application for a writ of withholding, including the procedures for suspending issuance of a writ of withholding; and

(8) include with the notice a suggested form for the motion to stay issuance and delivery of the writ of withholding that the obligor may file with the clerk of the appropriate court.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.253. INTERSTATE REQUEST FOR WITHHOLDING

(a) The registration of a foreign order that provides for spousal maintenance or alimony as provided in Chapter 159 is sufficient for filing a notice of application for a writ of withholding.

(b) The notice must be filed with the clerk of the court having venue as provided in Chapter 159.

(c) The notice of application for a writ of withholding may be delivered to the obligor at the same time that an order is filed for registration under Chapter 159.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.254. ADDITIONAL ARREARAGES

If the notice of application for a writ of withholding states that the obligor has failed to pay more than one spousal maintenance payment according to the terms of the spousal maintenance order, the writ of withholding may include withholding for arrearages that accrue between the filing of the notice and the date of the hearing or the issuance of the writ.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.255. DELIVERY OF NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING; TIME OF DELIVERY

(a) The party who files a notice of application for a writ of withholding shall deliver the notice to the obligor by:

(1) first-class or certified mail, return receipt requested, addressed to the obligor's last known address or place of employment; or

(2) service of citation as in civil cases generally.

(b) If the notice is delivered by mail, the party who filed the notice shall file with the court a certificate stating the name, address, and date the party mailed the notice.

(c) The notice is considered to have been received by the obligor:

(1) on the date of receipt, if the notice was mailed by certified mail;

(2) on the 10th day after the date the notice was mailed, if the notice was mailed by first-class mail; or

(3) on the date of service, if the notice was delivered by service of citation.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.256. MOTION TO STAY ISSUANCE OF WRIT OF WITHHOLDING

(a) The obligor may stay issuance of a writ of withholding by filing a motion to stay with the clerk of the court not later than the 10th day after the date the notice of application for a writ of withholding was received.

(b) The grounds for filing a motion to stay issuance are limited to a dispute concerning the identity of the obligor or the existence or the amount of the arrearages.

(c) The obligor shall verify that the statements of fact in the motion to stay issuance of the writ are correct.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.257. EFFECT OF FILING MOTION TO STAY

If the obligor files a motion to stay as provided by Section 8.256, the clerk of the court may not deliver the writ of withholding to the obligor's employer before a hearing is held.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.258. HEARING ON MOTION TO STAY

(a) If the obligor files a motion to stay as provided by Section 8.256, the court shall set a hearing on the motion and the clerk of the court shall notify the obligor and obligee of the date, time, and place of the hearing.

(b) The court shall hold a hearing on the motion to stay not later than the 30th day after the date the motion was filed unless the obligor and obligee agree and waive the right to have the motion heard within 30 days.

(c) After the hearing, the court shall:

(1) render an order for income withholding that includes a determination of any amount of arrearages; or

(2) grant the motion to stay.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.259. SPECIAL EXCEPTIONS

(a) A defect in a notice of application for a writ of withholding is waived unless the respondent specially excepts in writing and cites with particularity the alleged defect, obscurity, or other ambiguity in the notice.

(b) A special exception under this section must be heard by the court before hearing the motion to stay issuance.

(c) If the court sustains an exception, the court shall provide the party filing the notice an opportunity to refile and shall continue the hearing to a specified date without requiring additional service.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.260. WRIT OF WITHHOLDING AFTER ARREARAGES ARE PAID

(a) The court may not refuse to order withholding solely on the basis that the obligor paid the arrearages after the obligor received the notice of application for a writ of withholding.

(b) The court shall order that a reasonable amount of income be withheld and applied toward the liquidation of arrearages, even though a judgment confirming arrearages was rendered against the obligor.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.261. REQUEST FOR ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING

(a) If a notice of application for a writ of withholding is delivered and the obligor does not file a motion to stay within the time provided by Section 8.256, the party who filed the notice shall file with the clerk of the court a request for issuance of the writ of withholding stating the amount of current spousal maintenance, the amount of arrearages, and the amount to be withheld from the obligor's income.

(b) The party who filed the notice may not file a request for issuance before the 11th day after the date the obligor received the notice of application for a writ of withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.262. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING

The clerk of the court shall, on the filing of a request for issuance of a writ of withholding, issue and deliver the writ as provided by Subchapter D not later than the second working day after the date the request is filed. The clerk shall charge a fee in the amount of $15 for issuing the writ of withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

ANNOTATIONS

Dalton v. Dalton, 551 S.W.3d 126 (Tex. 2018). A Texas trial court cannot use court-ordered wage withholding to enforce a voluntary support obligation that does not qualify as spousal maintenance under Family Code chapter 8 unless the parties specifically agree to that enforcement method.

Pena v. State, No. 07-10-0503-CV, 2012 WL 2729293 (Tex. App.—Amarillo July 9, 2012, pet. denied) (mem. op.). A criminal inmate's inability to pay is not a defense to the requirement of paying legislatively mandated fees, such as the fee charged by the clerk for issuing a writ of withholding.

Owen v. State, 352 S.W.3d 542, 546 (Tex. App.—Amarillo 2011, no pet.). Legislatively mandated fees, such as the fee charged by the clerk for issuing a writ of withholding, may be withdrawn from a criminal inmate's account without regard to his ability to pay.

Sec. 8.263. CONTENTS OF WRIT OF WITHHOLDING

A writ of withholding must direct that an obligor's employer or a subsequent employer withhold from the obligor's disposable earnings an amount for current spousal maintenance and arrearages consistent with this chapter.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.264. EXTENSION OF REPAYMENT SCHEDULE BY PARTY; UNREASONABLE HARDSHIP

A party who files a notice of application for a writ of withholding and who determines that the schedule for repaying arrearages would cause unreasonable hardship to the obligor or the obligor's family may extend the payment period in the writ.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.265. REMITTANCE OF AMOUNT TO BE WITHHELD

The obligor's employer shall remit the amount withheld to the person or office named in the writ on each pay date and shall include with the remittance the date on which the withholding occurred.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.266. FAILURE TO RECEIVE NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING

(a) Not later than the 30th day after the date of the first pay period after the date the obligor's employer receives a writ of withholding, the obligor may file an affidavit with the court stating that:

(1) the obligor did not timely file a motion to stay because the obligor did not receive the notice of application for a writ of withholding; and

(2) grounds exist for a motion to stay.

(b) The obligor may:

(1) file with the affidavit a motion to withdraw the writ of withholding; and

(2) request a hearing on the applicability of the writ.

(c) Income withholding may not be interrupted until after the hearing at which the court renders an order denying or modifying withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.267. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING TO SUBSEQUENT EMPLOYER

(a) After the clerk of the court issues a writ of withholding, a party authorized to file a notice of application for a writ of withholding under this subchapter may deliver a copy of the writ to a subsequent employer of the obligor by certified mail.

(b) Except as provided by an order under Section 8.152, the writ of withholding must include the name, address, and signature of the party and clearly indicate that the writ is being issued to a subsequent employer.

(c) The party shall file:

(1) a copy of the writ of withholding with the clerk not later than the third working day after the date of delivery of the writ to the subsequent employer; and

(2) the postal return receipt from the delivery to the subsequent employer not later than the third working day after the date the party receives the receipt.

(d) The party shall pay the clerk a fee in the amount of $15 for filing the copy of the writ.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

ANNOTATIONS

Pena v. State, No. 07-10-0503-CV, 2012 WL 2729293 (Tex. App.—Amarillo July 9, 2012, pet. denied) (mem. op.). A criminal inmate's inability to pay is not a defense to the requirement of paying legislatively mandated fees, such as the fee charged by the clerk for issuing a writ of withholding.

Owen v. State, 352 S.W.3d 542, 546 (Tex. App.—Amarillo 2011, no pet.). Legislatively mandated fees, such as the fee charged by the clerk for issuing a writ of withholding, may be withdrawn from a criminal inmate's account without regard to his ability to pay.

SUBCHAPTER G. MODIFICATION, REDUCTION, OR TERMINATION OF WITHHOLDING

Sec. 8.301. AGREEMENT BY PARTIES REGARDING AMOUNT OR DURATION OF WITHHOLDING

(a) An obligor and obligee may agree to reduce or terminate income withholding for spousal maintenance on the occurrence of any contingency stated in the order.

(b) The obligor and obligee may file a notarized or acknowledged request with the clerk of the court under Section 8.108 for a revised writ of withholding or notice of termination of withholding.

(c) The clerk shall issue and deliver to the obligor's employer a writ of withholding that reflects the agreed revision or a notice of termination of withholding.

(d) An agreement by the parties under this section does not modify the terms of an order for spousal maintenance.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.302. MODIFICATIONS TO OR TERMINATION OF WITHHOLDING IN VOLUNTARY WITHHOLDING CASES

(a) If an obligor initiates voluntary withholding under Section 8.108, the obligee may file with the clerk of the court a notarized request signed by the obligor and the obligee for the issuance and delivery to the obligor of:

(1) a modified writ of withholding that reduces the amount of withholding; or

(2) a notice of termination of withholding.

(b) On receipt of a request under this section, the clerk shall issue and deliver a modified writ of withholding or notice of termination in the manner provided by Section 8.301.

(c) The clerk may charge a fee in the amount of $15 for issuing and delivering the modified writ of withholding or notice of termination.

(d) An obligee may contest a modified writ of withholding or notice of termination issued under this section by requesting a hearing in the manner provided by Section 8.258 not later than the 180th day after the date the obligee discovers that the writ or notice was issued.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.303. TERMINATION OF WITHHOLDING IN MANDATORY WITHHOLDING CASES

(a) An obligor for whom withholding for maintenance owed or withholding for maintenance and child support owed is mandatory may file a motion to terminate withholding. On a showing by the obligor that the obligor has complied fully with the terms of the maintenance or child support order, as applicable, the court shall render an order for the issuance and delivery to the obligor of a notice of termination of withholding.

(b) The clerk shall issue and deliver the notice of termination ordered under this section to the obligor.

(c) The clerk may charge a fee in the amount of $15 for issuing and delivering the notice.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.304. DELIVERY OF ORDER OF REDUCTION OR TERMINATION OF WITHHOLDING

Any person may deliver to the obligor's employer a certified copy of an order that reduces the amount of spousal maintenance to be withheld or terminates the withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.305. LIABILITY OF EMPLOYERS

The provisions of this chapter regarding the liability of employers for withholding apply to an order that reduces or terminates withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

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SUBCHAPTER A. SUIT TO ENFORCE DECREE

Sec. 9.001. ENFORCEMENT OF DECREE

(a) A party affected by a decree of divorce or annulment providing for a division of property as provided by Chapter 7, including a division of property and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006 that was approved by the court, may request enforcement of that decree by filing a suit to enforce as provided by this chapter in the court that rendered the decree.

(b) Except as otherwise provided in this chapter, a suit to enforce shall be governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit.

(c) A party whose rights, duties, powers, or liabilities may be affected by the suit to enforce is entitled to receive notice by citation and shall be commanded to appear by filing a written answer. Thereafter, the proceedings shall be as in civil cases generally.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 242 (H.B. 389), Sec. 5, eff. September 1, 2013.

ANNOTATIONS

Brown v. Fullenweider, 52 S.W.3d 169, 171 (Tex. 2011) (per curiam). An attorney's suit against his client for fees is not a postdivorce proceeding within the meaning of this chapter (formerly sections 3.70–.77), even though the parties' agreement incident to divorce provided that each party would pay his or her own attorney's fees, because this chapter is limited to issues related to division of the marital estate.

In re B.M.Y., No. 05-16-00475-CV, 2017 WL 3275505 (Tex. App.—Dallas July 26, 2017, no pet.) (mem. op.). Parties entered into a decree, which they agreed was a contract, including provision for payment of college expenses. Mother did not attempt to enforce the decree as a contract because she argued that the trial court had authority under the Family Code to enforce the decree and award mother a money judgment. Court of appeals reversed, holding that a breach of contract claim is the proper vehicle by which a party may seek reimbursement of postmajority expenses.

Ishee v. Ishee, No. 09-15-00197-CV, 2017 WL 2293150 (Tex. App.—Beaumont May 25, 2017, no pet.) (mem. op.). A postdivorce enforcement suit may be brought in any district court. "Section 9.001(a) does not evidence a legislative intent to make the court in which spouses obtain a divorce a court of exclusive jurisdiction for post-divorce actions that concern a dispute about property acquired after the parties divorced."

Joyner v. Joyner, 352 S.W.3d 746, 749 (Tex. App.—San Antonio 2011, no pet.). Any party affected by a divorce decree may seek to enforce the decree by filing an enforcement action.

Chavez v. McNeely, 287 S.W.3d 840, 844 (Tex. App.—Houston [1st Dist.] 2009, no pet.). Enforcement procedures under the Family Code are permissive, not mandatory, as section 9.001 uses the word "may" and not "shall."

Sec. 9.002. CONTINUING AUTHORITY TO ENFORCE DECREE

The court that rendered the decree of divorce or annulment retains the power to enforce the property division as provided by Chapter 7, including a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006 that was approved by the court.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 242 (H.B. 389), Sec. 6, eff. September 1, 2013.

COMMENTS

The court that rendered the divorce or annulment has continuing jurisdiction to enforce and clarify the property division, but it does not have exclusive continuing jurisdiction.

ANNOTATIONS

Pearson v. Fillingim, 332 S.W.3d 361, 363 (Tex. 2011) (per curiam). The court that renders a divorce decree retains jurisdiction to clarify and enforce the property division within that decree.

In re Provine, 312 S.W.3d 824, 830 (Tex. App.—Houston [1st Dist.] 2009, orig. proceeding). The Family Code provides limited, postjudgment jurisdiction that may be invoked only in particular circumstances as compared to its ability to modify a judgment during its plenary power, which is virtually absolute.

Chavez v. McNeely, 287 S.W.3d 840, 844 (Tex. App.—Houston [1st Dist.] 2009, no pet.). The language of sections 9.001 and 9.002 is permissive, not mandatory, such that a former husband could sue his ex-wife for breach of contract in a court different from that which rendered the divorce decree. Had the legislature intended that the divorce court have exclusive jurisdiction of postdivorce property division matters, it could have done so by using clear statutory language, as it has done in other situations.

Dechon v. Dechon, 909 S.W.2d 950, 955 (Tex. App.—El Paso 1995, no writ). "A trial court has inherent power to clarify or enforce its previously entered decree. Such jurisdiction encompasses both subject matter jurisdiction to adjudicate the dispute and personal jurisdiction over the parties originally affected by the decree."

Sec. 9.003. FILING DEADLINES

(a) A suit to enforce the division of tangible personal property in existence at the time of the decree of divorce or annulment must be filed before the second anniversary of the date the decree was signed or becomes final after appeal, whichever date is later, or the suit is barred.

(b) A suit to enforce the division of future property not in existence at the time of the original decree must be filed before the second anniversary of the date the right to the property matures or accrues or the decree becomes final, whichever date is later, or the suit is barred.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Stine v. Stewart, 80 S.W.3d 586, 592 (Tex. 2002) (per curiam). The two-year statute of limitations in this section does not apply to an action brought by a third-party beneficiary of a contractual agreement contained in a divorce decree. The action brought by the third-party beneficiary is one for breach of contract, not an action to enforce a property division in a divorce decree, and is governed by the four-year statute of limitations.

Moore v. Moore, 568 S.W.3d 725 (Tex. App.—Eastland 2019, no pet.). There is no time limitation under Family Code chapter 9 for suits involving the division of real property.

Morales v. Rice, 388 S.W.3d 376, 385 (Tex. App.—San Antonio 2012, no pet.). The divorce decree provided that if the ex-wife remarried or had a male nonfamily member live with her, she had to pay her ex-husband $10,000. The parties were divorced in 1995, and in 1996 a man began living with the ex-wife. Because the ex-husband waited until 2004 to make his demand for the money owed, his claim was barred by limitations.

Morales v. Morales, 195 S.W.3d 188, 191 (Tex. App.—San Antonio 2006, pet. denied). The right to receive payments under a divorce decree is subject to the two-year limitations provision formerly codified in subsection 3.70(c) and now in this section. The two-year limitations provision applies to all enforcement actions, including one involving an action to reduce payments awarded under a divorce decree to a money judgment within two years from the date the party's right to those payments accrued.

Jenkins v. Jenkins, 991 S.W.2d 440, 445 (Tex. App.—Fort Worth 1999, pet. denied). Subsection 9.003(b) did not bar an ex-wife's bankruptcy trustee's suit to reduce an award of alimony in an agreement incident to divorce to judgment, even though the trustee filed suit twenty-five months after the ex-husband stopped making alimony payments, because the trustee did not seek to enforce a property division but only to reduce a specific monetary award to judgment.

Dechon v. Dechon, 909 S.W.2d 950, 960–61 (Tex. App.—El Paso 1995, no writ). "[W]hile clarification is a remedy, it is in fact a prerequisite to enforcement rather than a method of enforcement. A period of several years may pass

before a litigant recognizes the need for a clarification proceeding. . . . [W]e apply no statute of limitations to the clarification procedure itself. It does apply, however, to the enforcement process once clarification is obtained."

Sec. 9.004. APPLICABILITY TO UNDIVIDED PROPERTY

The procedures and limitations of this subchapter do not apply to existing property not divided on divorce, which are governed by Subchapter C and by the rules applicable to civil cases generally.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 9.005. NO JURY

A party may not demand a jury trial if the procedures to enforce a decree of divorce or annulment provided by this subchapter are invoked.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 9.006. ENFORCEMENT OF DIVISION OF PROPERTY

(a) Except as provided by this subchapter and by the Texas Rules of Civil Procedure, the court may render further orders to enforce the division of property made or approved in the decree of divorce or annulment to assist in the implementation of or to clarify the prior order.

(b) The court may specify more precisely the manner of effecting the property division previously made or approved if the substantive division of property is not altered or changed.

(c) An order of enforcement does not alter or affect the finality of the decree of divorce or annulment being enforced.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 242 (H.B. 389), Sec. 7, eff. September 1, 2013.

ANNOTATIONS

Pearson v. Fillingim, 332 S.W.3d 361, 363 (Tex. 2011) (per curiam). A trial court lacked jurisdiction to clarify a divorce decree under this section because the decree, which granted each party a one-half interest in all property or assets not otherwise disposed of, was not ambiguous. The decree disposed of the ex-husband's allegedly separate property oil and gas royalties when it divided the "estate of the parties."

Hagen v. Hagen, 282 S.W.3d 899, 906 (Tex. 2009). A trial court acted correctly when it clarified a divorce decree by holding that the parties' divorce decree did not divide the ex-husband's VA disability pay after the ex-husband elected, upon retirement, to receive VA benefits, which reduced the amount of military retirement benefits to the ex-wife.

Everett v. Everett, 421 S.W.3d 918 (Tex. App.—El Paso 2014, no pet.). Converting an obligation in a divorce decree to pay residential taxes to spousal maintenance was not merely a clarification, but was a change to the substantive division of property.

DeGroot v. DeGroot, 369 S.W.3d 918, 922 (Tex. App.—Dallas 2012, no pet.). A trial court did not substantively change a divorce decree when, after the ex-husband liquidated a 401(k) account before the court signed a QDRO to effectuate its award of half the account to the ex-wife, the court granted the ex-wife a money judgment equal to half the account but allowed the ex-husband to satisfy the judgment by making monthly payments over eight years.

Garcia v. Alvarez, 367 S.W.3d 784, 787–88 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Ordering reimbursement of amounts paid is a proper method of enforcing a property division when the parties agree that the ex-wife will receive monthly payments from the ex-husband until her remarriage, but the ex-wife remarries without telling her ex-husband.

Vats v. Vats, No. 01-12-00255-CV, 2012 WL 2108672 (Tex. App.—Houston [1st Dist.] June 7, 2012, no pet.) (mem. op.). A trial court properly effected the intent of the parties to sell two tracts of land in India and divide the proceeds when the Texas court requested the Indian court to order the parties to sell the land and divide the proceeds in accordance with the divorce decree. The trial court's order did not change or alter the substantive division of the property. Rather, it specified "a more precise way of effecting the property division set forth in the order."

In re Marriage of Moore, No. 06-10-00071-CV, 2011 WL 860525 (Tex. App.—Texarkana Mar. 11, 2011, no pet.) (mem. op.). A trial court's order that an ex-wife reimburse an ex-husband for mortgage payments he made when she failed to make them was a proper function of the trial court's enforcement authority.

In re Kalathil, No. 14-10-00933-CV, 2010 WL 3872083 (Tex. App.—Houston [14th Dist.] Oct. 5, 2010, orig. proceeding) (mem. op.) (per curiam). A trial court did not abuse its discretion when it allowed postdivorce discovery on an ex-wife's motion to divide undisclosed property because the ex-wife was not attempting to alter the decree's substantive division of property but only to enforce the division of property.

Sharp v. Sharp, 314 S.W.3d 22, 25 (Tex. App.—San Antonio 2009, no pet.). An ex-wife, whom the trial court awarded 50 percent of her retired husband's military retirement pay if, as, and when received, was not entitled to any part of her ex-husband's Combat-Related Special Compensation (CRSC), which the VA granted him in lieu of retirement pay upon finding him 100 percent disabled, because the divorce decree was not ambiguous and did not award any of the CRSC to her.

Sec. 9.007. LIMITATION ON POWER OF COURT TO ENFORCE

(a) A court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment. An order to enforce the division is limited to an order to assist in the implementation of or to clarify the prior order and may not alter or change the substantive division of property.

(b) An order under this section that amends, modifies, alters, or changes the actual, substantive division of property made or approved in a final decree of divorce or annulment is beyond the power of the divorce court and is unenforceable.

(c) The trial court may not render an order to assist in the implementation of or to clarify the property division made or approved in the decree before the 30th day after the date the final judgment is signed. If a timely motion for new trial or to vacate, modify, correct, or reform the decree is filed, the trial court may not render an order to assist in the implementation of or to clarify the property division made or approved in the decree before the 30th day after the date the order overruling the motion is signed or the motion is overruled by operation of law.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 3, eff. Sept. 1, 2017.

ANNOTATIONS

Dalton v. Dalton, 551 S.W.3d 126 (Tex. 2018). A trial court may not later enter a QDRO that amends, modifies, alters, or changes the property division announced in the divorce decree.

Pearson v. Fillingim, 332 S.W.3d 361, 363 (Tex. 2011) (per curiam). A trial court lacks the power to amend, modify, alter, or change the division of property in a divorce decree even when a party contends that the decree incorrectly characterized or divided alleged separate property.

Shanks v. Treadway, 110 S.W.3d 444, 449 (Tex. 2003). A trial court had no authority to sign a QDRO limiting an ex-wife to 25 percent of the ex-husband's retirement benefits accrued by the date of divorce, rather than 25 percent of benefits whenever accrued, when the divorce decree awarded the ex-wife "25% of the total sum or sums paid or to be paid" to the ex-husband under any pension or retirement plans. Limiting the ex-wife to 25 percent of the retirement benefits accrued as of the date of divorce would have altered or modified the disposition of property in the divorce decree.

Reiss v. Reiss, 118 S.W.3d 439, 442 (Tex. 2003). The signing of a QDRO upon an ex-husband's retirement, eighteen years after divorce, did not impermissibly amend, modify, alter, or change the decree's division of property when the divorce decree awarded the ex-wife 50 percent of the ex-husband's retirement benefits if and when he retired but did not limit the benefits to those accrued during marriage.

Smith v. Burt, 528 S.W.3d 144, 148 (Tex. App.—El Paso 2017, no pet.). Ex-wife moved to enforce and clarify the amount of pension benefits, including cost-of-living-allowances, awarded to her in the divorce. The court disagreed with ex-husband's argument that ex-wife's interpretation of the divorce decree would convert the award of pension benefits from a fixed dollar amount to a percentage award because ex-wife's award is a combination of a fixed dollar amount plus a percentage of the cost-of-living-allowances.

Perry v. Perry, 512 S.W.3d 523 (Tex. App.—Houston [1st Dist.] 2016, no pet.). The appointment of a receiver under Civil Practice and Remedies Code section 64.001 to sell a residence upon terms and conditions determined solely by the receiver impermissibly modified a final decree that awarded the residence to husband, obligating him to pay wife a portion of the proceeds but failing to specify when and at what price the residence was to be sold.

In re W.L.W., 370 S.W.3d 799, 807 (Tex. App.—Fort Worth 2012, orig. proceeding). Allowing a suit to clarify and enforce a divorce decree that provided that any undisclosed or undervalued asset on a party's inventory would be awarded to the other party would require a trial court to make findings regarding the thoroughness of one side's inventory, which would violate the prohibition on amending, modifying, altering, or changing a divorce decree's division of property.

Garcia v. Alvarez, 367 S.W.3d 784, 787 (Tex. App.—Houston [14th Dist.] 2012, no pet.). The fact that a divorce decree incorporated an agreement between the parties did not mean that the procedures and enforcement mechanisms provided in this chapter no longer applied, or that the trial court had no ability to fashion an appropriate remedy within its authority, when the trial court ordered reimbursement to the ex-husband who agreed to make monthly payments to the ex-wife until she remarried, but the ex-wife remarried without informing her ex-husband.

In re M.M.III, 357 S.W.3d 841, 843 (Tex. App.—El Paso 2012, no pet.). A trial court had no authority to alter or modify an ex-wife's award of 23.08 percent of the ex-husband's military retirement benefits plus half of all cost-of-living adjustments (COLAs), despite the ex-husband's argument that the future COLA benefits were his separate property, because the decree's language was unambiguous, regardless whether the trial court intended to render such an order.

Sheikh v. Sheikh, 248 S.W.3d 381, 388 (Tex. App.—Houston [1st Dist.] 2007, no pet.). "Because [subsection 9.007(c)] is directed solely at the court's power, rather than at the parties' obligations, acts or responsibilities, section 9.007(c) does not stay, supersede or otherwise inhibit the finality of the [divorce] decree, absent a supersedeas bond."

Gainous v. Gainous, 219 S.W.3d 97, 108 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). A QDRO expressly excluding deferred retirement option plan payments from an ex-wife's 50 percent award of all retirement funds standing in the ex-husband's name was void when the divorce decree made no such distinction.

Baker v. Donovan, 199 S.W.3d 577, 580 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). A trial court did not abuse its discretion by refusing to deduct disability pay from the portion of an ex-husband's retirement it had awarded to the ex-wife because, even though disability pay should be deducted from such an award, the divorce decree did not separate out the disability pay from retirement benefits such that later reducing retirement pay by disability pay would alter or change the substantive division of property in the divorce decree.

In re Fischer-Stoker, 174 S.W.3d 268, 272 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). "[U]nder section 9.007(c) of the Family Code, the power of the trial court to issue an order of contempt to assist in clarifying or enforcing the terms of the property division in the divorce decree is abated."

Sec. 9.008. CLARIFICATION ORDER

(a) On the request of a party or on the court's own motion, the court may render a clarifying order before a motion for contempt is made or heard, in conjunction with a motion for contempt or on denial of a motion for contempt.

(b) On a finding by the court that the original form of the division of property is not specific enough to be enforceable by contempt, the court may render a clarifying order setting forth specific terms to enforce compliance with the original division of property.

(c) The court may not give retroactive effect to a clarifying order.

(d) The court shall provide a reasonable time for compliance before enforcing a clarifying order by contempt or in another manner.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

A clarification order can be heard either before a petition for contempt is made or heard, in conjunction with a petition for contempt, or when a petition for contempt is denied. But the court cannot make the clarification order retroactive, and it must give reasonable time for compliance before the order is enforced by contempt or in any other manner.

ANNOTATIONS

Smith v. Burt, 528 S.W.3d 144, 148 (Tex. App.—El Paso 2017, no pet.). Ex-wife moved to enforce and clarify the amount of pension benefits, including cost-of-living-allowances, awarded to her in the divorce. The court disagreed with ex-husband's argument that ex-wife's interpretation of the divorce decree would convert the award of pension benefits from a fixed dollar amount to a percentage award because ex-wife's award is a combination of a fixed dollar amount plus a percentage of the cost-of-living-allowances.

DeGroot v. DeGroot, 369 S.W.3d 918, 924 (Tex. App.—Dallas 2012, no pet.). A trial court did not give retroactive effect to a clarification order that required an ex-husband to make payments of $1,000 per month for ninety-six months to reimburse his ex-wife after he liquidated the parties' 401(k), half of which the trial court had awarded to the ex-wife.

Macias v. Macias, No. 13-09-00351-CV, 2010 WL 2697139 (Tex. App.—Corpus Christi July 8, 2010, pet. denied) (mem. op.). A trial court lacked authority, on a postdivorce motion for clarification, to limit the division of military retirement benefits to those accrued during marriage because the unambiguous divorce decree contained no such limitation.

Guerrero v. Guerra, 165 S.W.3d 778, 783 (Tex. App.—San Antonio 2005, no pet.). A divorce decree that stated that partition of retirement benefits "shall be in accordance with the approved 'after-acquired' property theory" was ambiguous because it did not define or clearly explain the "'after acquired' property theory." Accordingly, the trial court had the authority to clarify the divorce decree to state that the valuation date for the ex-wife's retirement should be the date of retirement rather than the date of divorce.

In re Marriage of Alford, 40 S.W.3d 187, 189–90 (Tex. App.—Texarkana 2001, no pet.). This section did not require a trial court to hold a trial before ordering an ex-husband to transfer frequent flyer miles to his ex-wife because a court may render a clarifying order on the request of a party or on its own motion.

Wright v. Eckhardt, 32 S.W.3d 891, 896 (Tex. App.—Corpus Christi 2000, no pet.). A provision in a divorce decree stating that an ex-husband must begin paying his ex-wife retirement benefits when his name was "officially added to the Navy retirement list" created a latent ambiguity as to when payments should begin when other provisions of the decree contemplated commencement of retirement payments upon the ex-husband's leaving active duty to join the fleet reserve rather than upon full retirement from the Navy.

Zeolla v. Zeolla, 15 S.W.3d 239, 242 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). An ex-husband's decision to retire at age fifty-seven created a latent ambiguity in the parties' divorce decree as to when the ex-husband must begin paying the ex-wife her share of his retirement benefits when the decree stated that payments must commence "if retirement occurs at age 65." The latent ambiguity allowed the trial court to clarify the decree to state that payments should have begun when the ex-husband retired.

Sec. 9.009. DELIVERY OF PROPERTY

To enforce the division of property made or approved in a decree of divorce or annulment, the court may make an order to deliver the specific existing property awarded, without regard to whether the property is of especial value, including an award of an existing sum of money or its equivalent.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 242 (H.B. 389), Sec. 8, eff. September 1, 2013.

ANNOTATIONS

DeGroot v. DeGroot, 369 S.W.3d 918, 922 (Tex. App.—Dallas 2012, no pet.). A trial court properly granted an ex-wife a money judgment to replace the interest the court awarded her in the parties' 401(k), all of which the ex-husband had taken, because delivery of the ex-wife's interest in the empty 401(k) was no longer an adequate remedy.

Fowler v. Fowler, No. 2-07-274-CV, 2008 WL 2330987 (Tex. App.—Fort Worth June 5, 2008, no pet.) (mem. op.). To enforce a property division made by a divorce decree, a court may order a party to deliver the specific property awarded.

In re Marriage of Malacara, 223 S.W.3d 600, 602 (Tex. App.—Amarillo 2007, no pet.) (per curiam). A trial court properly awarded an ex-wife an interest in the ex-husband's retirement, which had not been divided on divorce, despite the ex-husband's argument that his retirement was "personal property" within his possession as awarded to him in the divorce. Intangible property cannot be "possessed" within the meaning of such a provision.

Sec. 9.010. REDUCTION TO MONEY JUDGMENT

(a) If a party fails to comply with a decree of divorce or annulment and delivery of property awarded in the decree is no longer an adequate remedy, the court may render a money judgment for the damages caused by that failure to comply.

(b) If a party did not receive payments of money as awarded in the decree of divorce or annulment, the court may render judgment against a defaulting party for the amount of unpaid payments to which the party is entitled.

(c) The remedy of a reduction to money judgment is in addition to the other remedies provided by law.

(d) A money judgment rendered under this section may be enforced by any means available for the enforcement of judgment for debt.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Berry v. Berry, 417 S.W.3d 583 (Tex. App.—El Paso 2013, pet. denied). A husband and wife entered into a mediated settlement agreement which was approved in the divorce decree. The ex-husband defaulted in payment of monies to his ex-wife. Under subsections (b) and (c) of this section, the ex-wife was entitled to a money judgment because the decree was enforceable as a judgment and contract.

In re Marriage of Bivins, 393 S.W.3d 893 (Tex. App.—Waco 2012, pet. denied). A court may render a money judgment for damages caused by the failure of an ex-spouse to comply with a court order that the house be left in a good and workmanlike state of repair.

Hoell v. Hoell, No. 13-11-00733-CV, 2012 WL 2929366 (Tex. App.—Corpus Christi July 19, 2012, no pet.) (mem. op.). A trial court did not err when it found the following language sufficiently clear to enforce and rendered a money judgment in favor of an ex-wife: "It is further ORDERED, ADJUDGED, AND DECREED that [ex-husband] provide monetary assistance for the period, not to exceed, two years starting in the month and year of November 2008 until September 2010. [Ex-husband] has agreed to supplement [ex-wife's] income in order to alleviate the burden of sufficient funds needed to pay debts in both [ex-wife's and ex-husband's] name."

DeGroot v. DeGroot, 369 S.W.3d 918, 922 (Tex. App.—Dallas 2012, no pet.). A trial court properly granted an ex-wife a money judgment to replace the interest the court awarded her in the parties' 401(k), all of which the ex-husband had taken, because the husband's liquidation of the plan made it impossible for him to comply with the terms of the decree by delivering half of the plan to the ex-wife.

Dade v. Dade, No. 01-05-00912-CV, 2007 WL 1153053 (Tex. App.—Houston [1st Dist.] Apr. 19, 2007, no pet.) (mem. op.). A trial court acted within its discretion when it granted an ex-husband a monetary judgment in the amount of the difference between the specific amount the ex-husband was to receive from the ex-wife's retirement plan and the actual amount the ex-husband received when the plan administrator rejected a lump-sum QDRO and insisted on a percentage QDRO, which resulted in the ex-husband receiving substantially less than the trial court awarded him.

In re Marriage of Malacara, 223 S.W.3d 600, 603 (Tex. App.—Amarillo 2007, no pet.) (per curiam). A trial court properly awarded an ex-wife an interest in the ex-husband's retirement, which had not been divided on divorce, because the parties' settlement agreement provided that the parties owned any undivided property as joint tenants, such that the trial court correctly required the ex-husband to account to the ex-wife for her share of the retirement benefits he already had received.

Jenkins v. Jenkins, 991 S.W.2d 440, 445 (Tex. App.—Fort Worth 1999, pet. denied). An ex-wife's bankruptcy trustee could sue an ex-husband who ceased making alimony payments because the Family Code "allows a party who does not receive payments of money awarded in a divorce decree to sue the defaulting party for a money judgment in the amount of the unpaid payments. This remedy of reduction to a money judgment is in addition to the other remedies provided by law."

Sec. 9.011. RIGHT TO FUTURE PROPERTY

(a) The court may, by any remedy provided by this chapter, enforce an award of the right to receive installment payments or a lump-sum payment due on the maturation of an existing vested or nonvested right to be paid in the future.

(b) The subsequent actual receipt by the non-owning party of property awarded to the owner in a decree of divorce or annulment creates a fiduciary obligation in favor of the owner and imposes a constructive trust on the property for the benefit of the owner.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Simmons v. Simmons, No. 03-15-00008-CV, 2016 WL 280526 (Tex. App.—Austin Jan. 14, 2016, no pet.) (mem. op.). Trial court properly applied the "discovery rule" in wife's suit to enforce division of husband's retirement benefits under New Mexico decree where husband did not immediately surrender wife's portion to her upon his retirement and husband's actions were inherently undiscoverable, making husband wife's fiduciary and a constructive trustee of her share.

Schneider v. Schneider, 5 S.W.3d 925, 930 (Tex. App.—Austin 1999, no pet.). A constructive trust may arise only after the actual receipt of property by the nonowning spouse as opposed to the potential receipt of the owner's property by the nonowning spouse.

Jeffcoat v. Jeffcoat, 886 S.W.2d 567, 570 (Tex. App.—Beaumont 1994, no writ). Former section 3.75, now this section, allowed a trial court to partition future, undivided retirement payments owed to both parties and to appoint the ex-husband as a constructive trustee for the benefits owed to the ex-wife when the payments were being made directly to the ex-husband.

Sec. 9.012. CONTEMPT

(a) The court may enforce by contempt an order requiring delivery of specific property or an award of a right to future property.

(b) The court may not enforce by contempt an award in a decree of divorce or annulment of a sum of money payable in a lump sum or in future installment payments in the nature of debt, except for:

(1) a sum of money in existence at the time the decree was rendered; or

(2) a matured right to future payments as provided by Section 9.011.

(c) This subchapter does not detract from or limit the general power of a court to enforce an order of the court by appropriate means.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

In re Green, 221 S.W.3d 645, 649 (Tex. 2007, orig. proceeding) (per curiam). A former spouse may not be imprisoned for failure to pay alimony, as opposed to statutory spousal maintenance. The failure to pay a private alimony debt, even one referenced in a court order, is not contempt punishable by imprisonment. Enforcement of alimony must be through contractual remedies.

In re L.R.P., No. 05-14-01590-CV, 2016 WL 514174 (Tex. App.—Dallas Feb. 9, 2016, no pet.) (mem. op.). Where the final decree incorporated the parties' agreement that husband would pay spousal support but failed to include decretal or command language ordering him to pay, the trial court could not enforce the spousal support payments by contempt under Family Code chapters 8 or 9. The payments could only be enforced as a contract.

In re Watson, No. 2-05-169-CV, 2005 WL 1593481 (Tex. App.—Fort Worth July 7, 2005, orig. proceeding) (mem. op.). An order to pay attorney's fees is not enforceable by contempt as part of a divorce proceeding although such an order is enforceable by contempt in an enforcement proceeding.

Ford v. Ford, No. 14-99-00246-CV, 2000 WL 1263469 (Tex. App.—Houston [14th Dist.] Sept. 7, 2000, no pet.). An order to pay an ex-spouse part of an IRA and the resulting income taxes is enforceable by contempt as to payment of the IRA but not as to the tax liability, which constitutes an order to pay a debt.

Sec. 9.013. COSTS

The court may award costs in a proceeding to enforce a property division under this subchapter as in other civil cases.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

A trial court has discretion to award costs, including expert witness fees, in a proceeding to enforce a division of property brought pursuant to sections 9.001 through 9.014.

ANNOTATIONS

Messier v. Messier, 458 S.W.3d 155, 168 (Tex. App.—Houston [14th Dist.] 2015, no pet.). The expenses of an expert witness are not considered costs under section 9.013 and cannot be awarded in a chapter 9 proceeding.

In re Slanker, 365 S.W.3d 718 (Tex. App.—Texarkana 2012, orig. proceeding). Expert witness fees may be recoverable in property division enforcement proceedings, citing former section 3.77, now section 9.013.

Sec. 9.014. ATTORNEY'S FEES

The court may award reasonable attorney's fees in a proceeding under this subchapter. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order for fees in the attorney's own name by any means available for the enforcement of a judgment for debt.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 8, eff. September 1, 2009.

ANNOTATIONS

Messier v. Messier, 458 S.W.3d 155, 168 (Tex. App.—Houston [14th Dist.] 2015, no pet.). The expenses of an expert witness are not considered attorney's fees under section 9.014 and thus cannot be awarded in a Chapter 9 proceeding.

Shilling v. Gough, 393 S.W.3d 555 (Tex. App.—Dallas 2013, no pet.). An action brought to enforce an injunction against speech arising from a divorce decree is not governed by subchapter 9(A). Therefore, this section cannot serve as authority for an award of attorney's fees.

Gottfried v. Gottfried, No. 14-10-00645-CV, 2011 WL 5042483 (Tex. App.—Houston [14th Dist.] Oct. 25, 2011, pet. denied) (mem. op.). A trial court may award attorney's fees to an ex-spouse when the other ex-spouse sues for clarification of a divorce decree but does not prevail.

Norris v. Scheffler, No. 11-10-00191-CV, 2011 WL 4424612 (Tex. App.—Eastland Sept. 22, 2011, no pet.) (mem. op.). A trial court's clarification order was reversed because the underlying decree was unambiguous. An award of attorney's fees to the appellee was also reversed and, given its reversal on the merits, remanded to the trial court to determine whether and in what amount to award attorney's fees. On remand, if the appellee is awarded attorney's fees, the trial court must state good cause for the award because the appellee was not the prevailing party.

McKnight v. Trogdon-McKnight, 132 S.W.3d 126, 132 (Tex. App.—Houston [14th Dist.] 2004, no pet.). A trial court that erred by signing an amended QDRO abused its discretion when it awarded attorney's fees to the ex-spouse who sought the QDRO.

Jenkins v. Jenkins, 991 S.W.2d 440, 450 (Tex. App.—Fort Worth 1999, pet. denied). An award of attorney's fees under this section must be reasonable, and if a trial court awards attorney's fees to a nonprevailing party in a suit for clarification, it must state good cause for the award.

SUBCHAPTER B. POST-DECREE QUALIFIED DOMESTIC RELATIONS ORDER

Sec. 9.101. JURISDICTION FOR QUALIFIED DOMESTIC RELATIONS ORDER

(a) Notwithstanding any other provision of this chapter, the court that rendered a final decree of divorce or annulment or another final order dividing property under this title retains continuing, exclusive jurisdiction to render an enforceable qualified domestic relations order or similar order permitting payment of pension, retirement plan, or other employee benefits divisible under the law of this state or of the United States to an alternate payee or other lawful payee.

(b) Unless prohibited by federal law, a suit seeking a qualified domestic relations order or similar order under this section applies to a previously divided pension, retirement plan, or other employee benefit divisible under the law of this state or of the United States, whether the plan or benefit is private, state, or federal.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

PRACTICE TIPS

Jurisdiction under this section is vested exclusively in the court that rendered the final decree of divorce or annulment as contrasted with the permissive grant of continuing jurisdiction found in section 9.002. Therefore, if a postdivorce action for clarification or enforcement is joined with an action requesting an enforceable QDRO, the suit must be filed in the court that granted the divorce.

ANNOTATIONS

Dalton v. Dalton, 551 S.W.3d 126 (Tex. 2018). A trial court may not later enter a QDRO that amends, modifies, alters, or changes the property division announced in the divorce decree.

Araujo v. Araujo, 493 S.W.3d 232 (Tex. App.—San Antonio 2016, no pet.). Decree that awarded wife a portion of husband's railroad retirement benefits as provided within a QDRO "to be entered after the Decree" did not constitute the present rendition of a QDRO, meaning trial court's authority to issue a QDRO expired when the trial court's plenary power over decree expired. Wife's only option to obtain a QDRO was filing a new suit invoking the trial court's jurisdiction under section 9.101.

Gainous v. Gainous, 219 S.W.3d 97, 106 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). The court that rendered the divorce decree, or other final order dividing property, retains continuing, exclusive jurisdiction to render an enforceable QDRO or similar order.

In re Clayton, No. 09-05-412-CV, 2006 WL 1045175 (Tex. App.—Beaumont Apr. 20, 2006, orig. proceeding) (mem. op.). A trial court did not abuse its discretion when it transferred a case seeking clarification of retirement benefits to the court that granted the parties' divorce because that court retained continuing, exclusive jurisdiction to sign QDROs.

In re Marriage of Jones, 154 S.W.3d 225, 228 (Tex. App.—Texarkana 2005, no pet.). A trial court has continuing jurisdiction to sign a QDRO permitting payment of retirement benefits when they become payable.

Sec. 9.102. PROCEDURE

(a) A party to a decree of divorce or annulment may petition the court for a qualified domestic relations order or similar order.

(b) Except as otherwise provided by this code, a petition under this subchapter is governed by the Texas Rules of Civil Procedure that apply to the filing of an original lawsuit.

(c) Each party whose rights may be affected by the petition is entitled to receive notice by citation and shall be commanded to appear by filing a written answer.

(d) The proceedings shall be conducted in the same manner as civil cases generally.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Wellington v. Wellington, No. 04-16-00707-CV, 2018 WL 521595, at *1 (Tex. App.—San Antonio Jan. 24, 2018, no pet.) (mem. op.). The trial court signed a divorce decree that incorporated the terms of the parties' property agreement, including the division of military retirement benefits. More than 30 days later, the court signed a DRO. Neither party had filed a petition for a DRO. The court of appeals concluded "that 'the Court render[ed] the DRO by signing the Final Decree on April 1, 201[5] such that the signature on the DRO on May 8, 201[5] was a ministerial act.' The court further found that the DRO signed by the court did not substantially change or add terms to the decree."

Sec. 9.103. PRIOR FAILURE TO RENDER QUALIFIED DOMESTIC RELATIONS ORDER

A party may petition a court to render a qualified domestic relations order or similar order if the court that rendered a final decree of divorce or annulment or another final order dividing property under this chapter did not provide a qualified domestic relations order or similar order permitting payment of benefits to an alternate payee or other lawful payee.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Wellington v. Wellington, No. 04-16-00707-CV, 2018 WL 521595, at *1 (Tex. App.—San Antonio Jan. 24, 2018, no pet.) (mem. op.). The trial court signed a divorce decree that incorporated the terms of the parties' property agreement, including the division of military retirement benefits. More than 30 days later, the court signed a DRO. Neither party had filed a petition for a DRO. The court of appeals concluded "that 'the Court render[ed] the DRO by signing the Final Decree on April 1, 201[5] such that the signature on the DRO on May 8, 201[5] was a ministerial act.' The court further found that the DRO signed by the court did not substantially change or add terms to the decree."

Spiars v. Watson, No. 04-06-00200-CV, 2007 WL 2428041 (Tex. App.—San Antonio Aug. 29, 2007, no pet.) (mem. op.). A divorce decree that described the retirement benefits to be divided to include any to which the ex-husband "shall hereafter become entitled" was not ambiguous. Therefore, the trial court did not err by refusing to sign a QDRO that would have awarded the ex-wife a percentage of an ex-husband's retirement benefits earned as of the date of the ex-husband's retirement.

Sec. 9.104. DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER

If a plan administrator or other person acting in an equivalent capacity determines that a domestic relations order does not satisfy the requirements of a qualified domestic relations order or similar order, the court retains continuing, exclusive jurisdiction over the parties and their property to the extent necessary to render a qualified domestic relations order.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

In re N.T.P., 402 S.W.3d 13 (Tex. App.—San Antonio 2012, no pet.). It is not a prerequisite to clarification of a QDRO that the plan administrator first determine that the QDRO or similar order does not satisfy the requirements of such an order.

In re Marriage of Jones, 154 S.W.3d 225, 228 (Tex. App.—Texarkana 2005, no pet.). If an order does not satisfy the requirements to be a QDRO, the trial court that granted the divorce retains continuing, exclusive jurisdiction over the parties and their property to the extent necessary to render a proper QDRO.

McKnight v. Trogdon-McKnight, 132 S.W.3d 126, 132 (Tex. App.—Houston [14th Dist.] 2004, no pet.). A trial court erred by signing amended QDROs when there was nothing in the record to indicate that the amended QDROs were necessary. The record did not show that the plan administrator had rejected the earlier QDROs or that the earlier QDROs failed to reflect the terms of the divorce decree.

Sec. 9.1045. AMENDMENT OF QUALIFIED DOMESTIC RELATIONS ORDER

(a) A court that renders a qualified domestic relations order retains continuing, exclusive jurisdiction to amend the order to correct the order or clarify the terms of the order to effectuate the division of property ordered by the court.

(b) An amended domestic relations order under this section must be submitted to the plan administrator or other person acting in an equivalent capacity to determine whether the amended order satisfies the requirements of a qualified domestic relations order. Section 9.104 applies to a domestic relations order amended under this section.

Added by Acts 2005, 79th Leg., Ch. 481 (H.B. 248), Sec. 1, eff. June 17, 2005.

ANNOTATIONS

Gottfried v. Gottfried, No. 14-10-00645-CV, 2011 WL 5042483 (Tex. App.—Houston [14th Dist.] Oct. 25, 2011, pet. denied). A clarified or amended QDRO may be necessary if the retirement plan administrator rejects the prior QDRO or to correct or clarify the terms of a prior QDRO.

Vanloh v. Vanloh, No. 03-08-00017-CV, 2008 WL 3984373 (Tex. App.—Austin Aug. 28, 2008, no pet.) (mem. op.). A trial court did not change the substantive division of property in the parties' divorce decree when it clarified that the ex-wife's share of the ex-husband's pension should be based on his top three earnings years before divorce rather than on any salary increases that occurred after divorce.

McCaig v. McCaig, No. 12-06-00374-CV, 2007 WL 1765845 (Tex. App.—Tyler June 20, 2007, pet. denied) (mem. op.). A trial court lacked jurisdiction to sign a QDRO that restricted an award of an ex-wife's share of retirement benefits to retirement benefits earned as of the date of divorce because the QDRO changed the substantive division of property in the divorce decree, which awarded the ex-wife "one-half of any and all sums, whether matured or unma-

tured, accrued or unaccrued, vested or otherwise," in the ex-husband's retirement plan, "together with all increases thereof, the proceeds therefrom, and any other rights existing by reason of [the ex-husband's] employment."

Sec. 9.105. LIBERAL CONSTRUCTION

The court shall liberally construe this subchapter to effect payment of retirement benefits that were divided by a previous decree that failed to contain a qualified domestic relations order or similar order or that contained an order that failed to meet the requirements of a qualified domestic relations order or similar order.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 9.106. ATTORNEY'S FEES

In a proceeding under this subchapter, the court may award reasonable attorney's fees incurred by a party to a divorce or annulment against the other party to the divorce or annulment. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order for fees in the attorney's own name by any means available for the enforcement of a judgment for debt.

Added by Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 9, eff. September 1, 2009.

ANNOTATIONS

Thomas v. Daniel, No. 02-12-00397-CV, 2013 WL 3771321 (Tex. App.—Fort Worth July 18, 2013, no pet.) (mem. op.). An attorney's fee award under this section is discretionary, but the requesting party must file a pleading making that affirmative request.

Gottfried v. Gottfried, No. 14-10-00645-CV, 2011 WL 5042483 (Tex. App.—Houston [14th Dist.] Oct. 25, 2011, pet. denied). Although an ex-wife requested attorney's fees under theories for which there was doubtful legal or factual basis, a trial court did not abuse its discretion by awarding the ex-wife her attorney's fees when it denied the ex-husband's motion to clarify the divorce decree and QDRO and the bench trial lasted several days on issues largely determinable by referencing the unambiguous decree and QDRO.

SUBCHAPTER C. POST-DECREE DIVISION OF PROPERTY

Sec. 9.201. PROCEDURE FOR DIVISION OF CERTAIN PROPERTY NOT DIVIDED ON DIVORCE OR ANNULMENT

(a) Either former spouse may file a suit as provided by this subchapter to divide property not divided or awarded to a spouse in a final decree of divorce or annulment.

(b) 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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Reiss v. Reiss, 118 S.W.3d 439, 442 (Tex. 2003). A trial court did not err when it signed a QDRO granting an ex-wife 50 percent of her ex-husband's retirement benefits if, as, and when received rather than limiting the QDRO to retirement benefits accrued as of the date of divorce. Although the divorce decree incorrectly included retirement benefits the ex-husband accrued after divorce, the ex-husband's remedy was to appeal the divorce decree, which he did not do. The QDRO the ex-wife sought served its intended purpose and did not impermissibly amend, modify, alter, or change the division of property in the divorce decree.

King v. King, No. 05-16-00467-CV, 2017 WL 930029, at *2 (Tex. App.—Dallas Mar. 9, 2017, no pet.) (mem. op.). Decree awarded to husband "Husband's TMRS account with the City of Mesquite, except for the amount of $32,000.00 of Husband's TMRS which is awarded to Wife." Wife filed a petition for postdivorce division of property, alleging that the award did not refer to and therefore did not divide the municipality's matching funds. The trial court disagreed and the court of appeals affirmed, finding that the parties agreed in the decree that they had made a "full and complete resolution of this case," which included a "just and right division of the parties' marital estate," and concluding that the decree partitioned all property rights concerning husband's TMRS account.

Sheldon v. Sheldon, No. 03-11-00803-CV, 2013 WL 6175586 (Tex. App.—Austin Nov. 22, 2013, no pet.) (mem. op.). A postdivorce suit to divide undivided marital property is a new suit. An appeal from a postdivorce suit to divide property may not collaterally attack an unappealed divorce decree.

Brown v. Brown, 236 S.W.3d 343, 348 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Res judicata bars relitigation of a property division but only as to those assets actually divided. Although res judicata is an affirmative defense that must be pled in response to a common law claim, where a party pursues a postdivorce statutory claim for the division of undivided assets, the petitioning party carries the burden of establishing that specific assets were not previously divided.

Kadlecek v. Kadlecek, 93 S.W.3d 903, 909 (Tex. App.—Austin 2007, no pet.). A trial court did not err when it rejected an ex-husband's contention that a residuary clause in a divorce decree, which awarded all community property or its value not otherwise awarded in the decree to the spouse in possession or control of the property, awarded the right to elect a survivor annuity to the ex-husband.

In re Marriage of Notash, 118 S.W.3d 868, 874 (Tex. App.—Texarkana 2003, no pet.). After a divorce in Iran that neither divided community property in Texas nor set child support, the ex-wife sued the ex-husband to divide the community property. She also sued him for breach of fiduciary duty with respect to the undivided community estate. The court of appeals held that there is no fiduciary duty between divorced spouses who are cotenants. The court further noted that division of undivided community property is by a just and right standard that will not be disturbed on appeal unless that division is manifestly unjust and unfair.

In re Marriage of Moore, 890 S.W.2d 821, 840 (Tex. App.—Amarillo 1994, no writ). A residuary clause in the parties' divorce decree that awarded all community property or its value not otherwise divided in the decree to be continually owned by the parties in equal undivided interests effectively disposed of the entire community estate.

Sec. 9.202. LIMITATIONS

(a) A suit under this subchapter must be filed before the second anniversary of the date a former spouse unequivocally repudiates the existence of the ownership interest of the other former spouse and communicates that repudiation to the other former spouse.

(b) The two-year limitations period is tolled for the period that a court of this state does not have jurisdiction over the former spouses or over the property.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Contreras v. Contreras, No. 04-08-00607-CV, 2009 WL 36305 (Tex. App.—San Antonio Jan. 7, 2009, no pet.) (mem. op.). A trial court erred in denying relief under this section when there was nothing in the record showing that the ex-husband either unequivocally repudiated the existence of the ex-wife's interest in undivided property or communicated that repudiation to her.

Mayes v. Stewart, 11 S.W.3d 440, 457 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). This section does not apply to a partition suit brought under Tex. Prop. Code § 23.001, which provides for the partition of real and personal property.

Sagester v. Waltrip, 970 S.W.2d 767, 769 (Tex. App.—Austin 1998, pet. denied). An ex-husband's general denial, filed in a suit to divide undivided community property that the trial court dismissed for want of prosecution, did not constitute an unequivocal repudiation of the ex-wife's subsequent suit to divide undivided community property.

Sec. 9.203. DIVISION OF UNDIVIDED ASSETS WHEN PRIOR COURT HAD JURISDICTION

(a) If a court of this state failed to dispose of property subject to division in a final decree of divorce or annulment even though the court had jurisdiction over the spouses or over the property, the court shall divide the property in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

(b) If a final decree of divorce or annulment rendered by a court in another state failed to dispose of property subject to division under the law of that state even though the court had jurisdiction to do so, a court of this state shall apply the law of the other state regarding undivided property as required by Section 1, Article IV, United States Constitution (the full faith and credit clause), and enabling federal statutes.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

COMMENTS

This section sets out two distinct criteria for dividing property that was not divided or disposed of in a prior divorce proceeding when the trial court had jurisdiction to divide it. Under subsection 9.203(a), if a Texas court with jurisdiction over either the spouses or the property failed to dispose of the property subject to division in either a decree of divorce or annulment, then the standard for the subsequent division of that property is by a just and right division, having due regard for the rights of each party and any children of the marriage. Under subsection 9.203(b), if the court of another state that had jurisdiction to dispose of property subject to division under the laws of that state but failed to do so in either a final decree of divorce or annulment, then the Texas court must apply the law of the other state regarding the undivided property and not the law of Texas.

Compare the method of dividing property that was not divided by another state's court in subsection 9.203(b) (apply the law of that state) with subsection 9.204(b) (requires Texas court to make a just and right division of undivided property when the other state lacked jurisdiction).

ANNOTATIONS

Harton v. Wade, No. 12-12-00158-CV, 2013 WL 2286056 (Tex. App.—May 22, 2013, no pet.) (mem. op.). A postdivorce partition of jointly held assets resulted in the award of two assets to husband and equal division of a third asset. The ex-wife complained that the postdivorce partition did not follow the divorce decree's division of 63.4 percent of the community estate to her and 36.6 percent to the ex-husband. The ex-wife cited no authority for the proposition that a trial court abused its discretion by failing to follow the ratio used in the property division in the divorce. In a postdivorce partition of jointly held assets, the court has discretion to divide the assets in any manner that is just and reasonable.

Maddox v. Maddox, No. 06-10-00055-CV, 2011 WL 808930 (Tex. App.—Texarkana Mar. 9, 2011, no pet.) (mem. op.). Neither a divorce decree nor any QDRO divided a deceased ex-husband's retirement, although the divorce decree did grant the ex-wife monthly or yearly payments from it, such that a trial court acted within its discretion when it divided the corpus of the retirement between the ex-wife and the ex-husband's widow. Former spouses become cotenants or joint owners of undivided community property upon divorce.

Wheeler v. Wheeler, No. 11-06-00313-CV, 2008 WL 1722822 (Tex. App.—Eastland Apr. 10, 2008, no pet.) (mem. op.). After granting an agreed divorce that awarded an ex-husband's retirement plan to his ex-wife, a trial court did not abuse its discretion by awarding 100 percent of a second, undivided retirement plan to the ex-husband when the trial court stated in its findings of fact and conclusions of law that the award of all the undivided plan to the husband was just and right.

Schuchmann v. Schuchmann, 193 S.W.3d 598, 604 (Tex. App.—Fort Worth 2008, pet. denied). After divorce proceedings in Dallas County, accompanied by litigation between the parties in a Denton County probate court, an ex-husband sued to divide undivided assets in the Dallas County court. However, the Denton County court transferred the postdivorce division case to itself. The court of appeals held that the Denton County probate court had no jurisdiction to hear the postdivorce division case, even though it might have had jurisdiction over the parties and the undivided property, because this section confers jurisdiction over postdivorce division suits on the court that divorced the parties.

Sec. 9.204. DIVISION OF UNDIVIDED ASSETS WHEN PRIOR COURT LACKED JURISDICTION

(a) If a court of this state failed to dispose of property subject to division in a final decree of divorce or annulment because the court lacked jurisdiction over a spouse or the property, and if that court subsequently acquires the requisite jurisdiction, that court may divide the property in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

(b) If a final decree of divorce or annulment rendered by a court in another state failed to dispose of property subject to division under the law of that state because the court lacked jurisdiction over a spouse or the property, and if a court of this state subsequently acquires the requisite jurisdiction over the former spouses or over the property, the court in this state may divide the property in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 9.205. ATTORNEY'S FEES

In a proceeding to divide property previously undivided in a decree of divorce or annulment as provided by this subchapter, the court may award reasonable attorney's fees. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order in the attorney's own name by any means available for the enforcement of a judgment for debt.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 768 (S.B. 866), Sec. 10, eff. September 1, 2009.

ANNOTATIONS

Stirling v. Stirling, No. 02-10-00329-CV, 2011 WL 3211242 (Tex. App.—Fort Worth July 28, 2011, no pet.) (mem. op.). A trial court abused its discretion by awarding attorney's fees to an ex-wife on a claim for postdivorce partition of an asset that was unambiguously awarded to the ex-husband in the divorce decree.

Messina v. Messina, No. 01-07-00277-CV, 2008 WL 2854191 (Tex. App.—Houston [1st Dist.] July 24, 2008, pet. denied) (mem. op.). A trial court did not abuse its discretion by awarding attorney's fees to an ex-husband when the ex-wife nonsuited her case for postdivorce partition, the trial court dismissed her case with prejudice under Tex. R. Civ. P. 13, and the ex-wife's attorney testified that he believed the ex-husband had a right to attorney's fees.

Wilson v. Wilson, No. 09-07-484-CV, 2008 WL 2758147 (Tex. App.—Beaumont July 17, 2008, no pet.) (mem. op.). After the parties divorced, the IRS refunded a substantial sum of taxes to the parties. The ex-husband cashed the check and kept the money. The ex-wife filed suit for postdivorce division of property. The ex-husband asserted various defenses, including offset. The trial court, which divided the amount of the check between the parties, did not abuse its discretion when it denied attorneys' fees to the ex-wife because the ex-husband prevailed on his offset such that both parties prevailed on certain aspects of their claims.

Pletcher v. Goetz, 9 S.W.3d 442, 448 (Tex. App.—Fort Worth 1999, pet. denied). A trial court did not abuse its discretion when it awarded an ex-husband attorney's fees under this section. However, the trial court did abuse its discretion when it also awarded the ex-husband attorney's fees for defending against the ex-wife's motion to modify the property division because no statute authorizes such an award.

SUBCHAPTER D. DISPOSITION OF UNDIVIDED BENEFICIAL INTEREST

Sec. 9.301. PRE-DECREE DESIGNATION OF EX-SPOUSE AS BENEFICIARY OF LIFE INSURANCE

(a) If a decree of divorce or annulment is rendered after an insured has designated the insured's spouse as a beneficiary under a life insurance policy in force at the time of rendition, a provision in the policy in favor of the insured's former spouse is not effective unless:

(1) the decree designates the insured's former spouse as the beneficiary;

(2) the insured redesignates the former spouse as the beneficiary after rendition of the decree; or

(3) the former spouse is designated to receive the proceeds in trust for, on behalf of, or for the benefit of a child or a dependent of either former spouse.

(b) If a designation is not effective under Subsection (a), the proceeds of the policy are payable to the named alternative beneficiary or, if there is not a named alternative beneficiary, to the estate of the insured.

(c) An insurer who pays the proceeds of a life insurance policy issued by the insurer to the beneficiary under a designation that is not effective under Subsection (a) is liable for payment of the proceeds to the person or estate provided by Subsection (b) only if:

(1) before payment of the proceeds to the designated beneficiary, the insurer receives written notice at the home office of the insurer from an interested person that the designation is not effective under Subsection (a); and

(2) the insurer has not interpleaded the proceeds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Hennig v. Didyk, 438 S.W.3d 177 (Tex. App.—Dallas 2014, pet. denied). As a matter of law, a former wife was not entitled to life insurance policy proceeds law under subsection 9.301(a) and she also had waived all rights to such proceeds pursuant to the terms of a prior agreed decree of divorce. ERISA preemption did not apply as the case involved a contract dispute between the parties, governed by state law. The trial court correctly denied former wife's res judicata claim relating to a prior federal court decision awarding her the proceeds because the federal court did not exercise jurisdiction over former wife's state law contract claims.

Branch v. Monumental Life Insurance Co., 422 S.W.3d 919 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Ex-wife was not entitled to ex-husband's life insurance proceeds under section 9.301 because the final decree of divorce effectively terminated her rights as a named beneficiary and she met none of the statutory exceptions. Evidence that ex-wife had paid the premiums for the life insurance policy was irrelevant to her claim that she was the policy owner entitled to the proceeds.

Gray v. Nash, 259 S.W.3d 286, 291 (Tex. App.—Fort Worth 2008, pet. denied). This section did not nullify the post-divorce designation of an ex-husband's former wife as partial beneficiary of his life insurance policy for the benefit of the parties' child because (1) it applies only to predivorce or preannulment beneficiary designations; and (2) the parties' subsequent modification order, which granted the ex-husband primary possession of the parties' child, recited that the ex-husband was current in his child support obligation, and terminated those obligations, was not a decree of divorce or annulment as required by this section.

Spiegel v. KLRU Endowment Fund, 228 S.W.3d 237, 245 (Tex. App.—Austin 2007, pet. denied). An MSA revoked a wife's designation of her husband as beneficiary under a life insurance policy, even though the wife died before the

trial court rendered judgment on the MSA, because the MSA included language indicating the parties' intent to sever their financial relationship immediately and completely and contained a broad, mutual release by each party that ran to the benefit of the parties' attorneys, heirs, and legal representatives.

Camacho v. Montes, No. 07-05-0003-CV, 2006 WL 2660744 (Tex. App.—Amarillo Sept. 15, 2006, no pet.) (mem. op.). Pursuant to this section, a divorce decree terminated the designation of an ex-wife as a life insurance beneficiary even though the ex-wife continued to pay the premium and the ex-husband remarried and died without changing the designation.

Sec. 9.302. PRE-DECREE DESIGNATION OF EX-SPOUSE AS BENEFICIARY IN RETIREMENT BENEFITS AND OTHER FINANCIAL PLANS

(a) If a decree of divorce or annulment is rendered after a spouse, acting in the capacity of a participant, annuitant, or account holder, has designated the other spouse as a beneficiary under an individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant in force at the time of rendition, the designating provision in the plan in favor of the other former spouse is not effective unless:

(1) the decree designates the other former spouse as the beneficiary;

(2) the designating former spouse redesignates the other former spouse as the beneficiary after rendition of the decree; or

(3) the other former spouse is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either former spouse.

(b) If a designation is not effective under Subsection (a), the benefits or proceeds are payable to the named alternative beneficiary or, if there is not a named alternative beneficiary, to the designating former spouse.

(c) A business entity, employer, pension trust, insurer, financial institution, or other person obligated to pay retirement benefits or proceeds of a financial plan covered by this section who pays the benefits or proceeds to the beneficiary under a designation of the other former spouse that is not effective under Subsection (a) is liable for payment of the benefits or proceeds to the person provided by Subsection (b) only if:

(1) before payment of the benefits or proceeds to the designated beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the beneficiary or fiduciary is not effective under Subsection (a); and

(2) the payor has not interpleaded the benefits or proceeds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

(d) This section does not affect the right of a former spouse to assert an ownership interest in an undivided pension, retirement, annuity, or other financial plan described by this section as provided by this subchapter.

(e) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system as defined by Section 802.001, Government Code.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

ANNOTATIONS

Kennedy v. Plan Administrator, 555 U.S. 285 (2009). Although a wife waived any interest in her husband's retirement plan when the parties divorced, the plan administrator correctly paid the plan's balance to the ex-wife upon the ex-husband's death because ERISA required the plan administrator to follow the ex-husband's designation, before divorce, as beneficiary, a designation he never changed.

Keen v. Weaver, 121 S.W.3d 721 (Tex. 2003), *cert. denied*, 540 U.S. 1047 (2003). ERISA did not prevent a former wife from waiving any interest in her former husband's plan upon divorce, such that even though the former husband did not remove the former wife as the primary beneficiary of the plan, the alternative beneficiary received the plan proceeds.

Olmstead v. Napoli, 383 S.W.3d 650 (Tex. App.—Houston [14th Dist.] 2012, no pet.). A husband designated his wife as beneficiary on an IRA he purchased before their marriage. The parties later married, then divorced. The divorce decree awarded the proceeds of the IRA to the husband. The ex-husband died, and the ex-wife sought the proceeds of the IRA as beneficiary. The trial court correctly held that although the ex-husband never changed the beneficiary designation, the parties' divorce decree contained language that the ex-wife forfeited all of her rights to the IRA. Pursuant to this section, the decree extinguished the wife's rights as an IRA beneficiary.

TITLE 1–A. COLLABORATIVE FAMILY LAW

CHAPTER 15. COLLABORATIVE FAMILY LAW ACT

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Charlie Hodges, *The Practical Aspects of Mediation*, Fam. L. 101 (2013).

Kim M. Munsinger (ed.), Collaborative Law—Start to Finish (State Bar of Texas, 2014).

Tom Noble, Collaborative Law and Mediation: Binding Decision Provisions in Mediated Settlement Agreements, Fam. L. Sec. Rep. (Spring 2013).

Pauline H. Tesler, Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation (Am. Bar Ass'n, 3rd ed. 2016).

ANNOTATIONS

Pribyl v. Pribyl, 307 S.W.3d 882 (Tex. App.—Austin 2010, no pet.). A husband who allegedly failed to disclose property in a collaborative divorce could not be sued for breach of the collaborative law agreement, which required full disclosure, because such a suit would constitute an impermissible collateral attack on a final judgment.

SUBCHAPTER A. APPLICATION AND CONSTRUCTION

Sec. 15.001. POLICY

It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including disputes involving the conservatorship of, possession of or access to, and support of a child, and the early settlement of pending litigation through voluntary settlement procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

Texas passed the first statutes dealing directly with the practice of collaborative law in 2001. In 2011, Texas became the third state to enact the Uniform Collaborative Law Act, codified at Title 1-A of the Family Code, chapter 15, Collaborative Family Law Act. The Act also has been enacted in Alabama, Arizona, Florida, Hawaii, Illinois, Maryland, Michigan, Montana, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, Tennessee, Utah, Washington, and the District of Columbia. It has also been introduced in Massachusetts and North Carolina.

Sec. 15.002. CONFLICTS BETWEEN PROVISIONS

If a provision of this chapter conflicts with another provision of this code or another statute or rule of this state and the conflict cannot be reconciled, this chapter prevails.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact a collaborative law process Act for family law matters.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.004. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 15.051. SHORT TITLE

This chapter may be cited as the Collaborative Family Law Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.052. DEFINITIONS

In this chapter:

(1) "Collaborative family law communication" means a statement made by a party or nonparty participant, whether oral or in a record, or verbal or nonverbal, that:

(A) is made to conduct, participate in, continue, or reconvene a collaborative family law process; and

(B) occurs after the parties sign a collaborative family law participation agreement and before the collaborative family law process is concluded.

(2) "Collaborative family law participation agreement" means an agreement by persons to participate in a collaborative family law process.

(3) "Collaborative family law matter" means a dispute, transaction, claim, problem, or issue for resolution that arises under Title 1 or 5 and that is described in a collaborative family law participation agreement. The term includes a dispute, claim, or issue in a proceeding.

(4) "Collaborative family law process" means a procedure intended to resolve a collaborative family law matter without intervention by a tribunal in which parties:

(A) sign a collaborative family law participation agreement; and

(B) are represented by collaborative family law lawyers.

(5) "Collaborative lawyer" means a lawyer who represents a party in a collaborative family law process.

(6) "Law firm" means:

(A) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(B) lawyers employed in a legal services organization or in the legal department of a corporation or other organization or of a government or governmental subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, including a collaborative lawyer, other than a party, who participates in a collaborative family law process.

(8) "Party" means a person who signs a collaborative family law participation agreement and whose consent is necessary to resolve a collaborative family law matter.

(9) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery.

(10) "Prospective party" means a person who discusses with a prospective collaborative lawyer the possibility of signing a collaborative family law participation agreement.

(11) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) "Related to a collaborative family law matter" means a matter involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative family law matter.

(13) "Sign" means, with present intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(14) "Tribunal" means a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.053. APPLICABILITY

This chapter applies only to a matter arising under Title 1 or 5.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

The Collaborative Family Law Act is limited to Title 1 (Marriage Relationship) and Title 5 (Suits Affecting the Parent-Child Relationship) causes of action. Thus, it is available for divorces, premarital agreements, postmarital agreements, modifications, and other SAPCRs, but it is unavailable for emancipations, name changes, juvenile proceedings, and protective orders, unless such protective orders are sought by agreement within the framework of Titles 1 or 5 and meet the requirements of section 15.104.

SUBCHAPTER C. COLLABORATIVE FAMILY LAW PROCESS

Sec. 15.101. REQUIREMENTS FOR COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT

(a) A collaborative family law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties' intent to resolve a collaborative family law matter through a collaborative family law process under this chapter;

(4) describe the nature and scope of the collaborative family law matter;

(5) identify the collaborative lawyer who represents each party in the collaborative family law process; and

(6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative family law process.

(b) A collaborative family law participation agreement must include provisions for:

(1) suspending tribunal intervention in the collaborative family law matter while the parties are using the collaborative family law process; and

(2) unless otherwise agreed in writing, jointly engaging any professionals, experts, or advisors serving in a neutral capacity.

(c) Parties may agree to include in a collaborative family law participation agreement additional provisions not inconsistent with this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

ANNOTATIONS

In re Mabray, 355 S.W.3d 16, 23 (Tex. App.—Houston [1st Dist.] 2010, orig. proceeding). A collaborative law participation agreement must reference this chapter for the participants to avail themselves of its protections. Cooperative law cases that do not contain the attorney withdrawal provision, also known as the collaborative commitment, may not avail themselves of the protections of this chapter, including the privileged communications provision, section 15.114.

Sec. 15.102. BEGINNING AND CONCLUDING COLLABORATIVE FAMILY LAW PROCESS

(a) A collaborative family law process begins when the parties sign a collaborative family law participation agreement.

(b) A tribunal may not order a party to participate in a collaborative family law process over that party's objection.

(c) A collaborative family law process is concluded by:

(1) resolution of a collaborative family law matter as evidenced by a signed record;

(2) resolution of a part of a collaborative family law matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) termination of the process under Subsection (d).

(d) A collaborative family law process terminates:

(1) when a party gives notice to other parties in a record that the process is ended;

(2) when a party:

(A) begins a proceeding related to a collaborative family law matter without the agreement of all parties; or

(B) in a pending proceeding related to the matter:

(i) without the agreement of all parties, initiates a pleading, motion, or request for a conference with the tribunal;

(ii) initiates an order to show cause or requests that the proceeding be put on the tribunal's active calendar; or

(iii) takes similar action requiring notice to be sent to the parties; or

(3) except as otherwise provided by Subsection (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice in a record to all other parties of the collaborative lawyer's discharge or withdrawal.

(f) A party may terminate a collaborative family law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative family law process continues if, not later than the 30th day after the date the notice of the collaborative lawyer's discharge or withdrawal required by Subsection (e) is sent to the parties:

(1) the unrepresented party engages a successor collaborative lawyer; and

(2) in a signed record:

(A) the parties consent to continue the process by reaffirming the collaborative family law participation agreement;

(B) the agreement is amended to identify the successor collaborative lawyer; and

(C) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative family law process does not conclude if, with the consent of the parties to a signed record resolving all or part of the collaborative matter, a party requests a tribunal to approve a resolution of the collaborative family law matter or any part of that matter as evidenced by a signed record.

(i) A collaborative family law participation agreement may provide additional methods of concluding a collaborative family law process.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

The only way to begin a collaborative law process is to sign a collaborative family law participation agreement. There are several ways to end the collaborative law process. It may be concluded by resolution, partial resolution, or by termination of the collaborative law process. Termination of the collaborative law process can occur by (1) a party giving notice in a record (either a written document to other parties in the process or by making an oral statement of termination on the record in a tribunal); (2) a party acting inconsistent with the collaborative process (such as requesting an adversarial hearing); or (3) termination or withdrawal of a collaborative lawyer (and no replacement with another collaborative lawyer within thirty days).

Sec. 15.103. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT

(a) The parties to a proceeding pending before a tribunal may sign a collaborative family law participation agreement to seek to resolve a collaborative family law matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after the agreement is signed. Subject to Subsection (c) and Sections 15.104 and 15.105, the filing operates as a stay of the proceeding.

(b) A tribunal that is notified, not later than the 30th day before the date of a proceeding, that the parties are using the collaborative family law process to attempt to settle a collaborative family law matter may not, until a party notifies the tribunal that the collaborative family law process did not result in a settlement:

(1) set a proceeding or a hearing in the collaborative family law matter;

(2) impose discovery deadlines;

(3) require compliance with scheduling orders; or

(4) dismiss the proceeding.

(c) The parties shall notify the tribunal in a pending proceeding if the collaborative family law process results in a settlement. If the collaborative family law process does not result in a settlement, the parties shall file a status report:

(1) not later than the 180th day after the date the collaborative family law participation agreement was signed or, if the proceeding was filed by agreement after the collaborative family law participation agreement was signed, not later than the 180th day after the date the proceeding was filed; and

(2) on or before the first anniversary of the date the collaborative family law participation agreement was signed or, if the proceeding was filed by agreement after the collaborative family law participation agreement was signed, on or before the first anniversary of the date the proceeding was filed, accompanied by a motion for continuance.

(d) The tribunal shall grant a motion for continuance filed under Subsection (c)(2) if the status report indicates that the parties desire to continue to use the collaborative family law process.

(e) If the collaborative family law process does not result in a settlement on or before the second anniversary of the date the proceeding was filed, the tribunal may:

(1) set the proceeding for trial on the regular docket; or

(2) dismiss the proceeding without prejudice.

(f) Each party shall file promptly with the tribunal notice in a record when a collaborative family law process concludes. The stay of the proceeding under Subsection (a) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(g) A tribunal in which a proceeding is stayed under Subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative family law process and the proceeding. A status report:

(1) may include only information on whether the process is ongoing or concluded; and

(2) may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative family law process or collaborative family law matter.

(h) A tribunal may not consider a communication made in violation of Subsection (g).

(i) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding based on delay or failure to prosecute in which a notice of collaborative family law process is filed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

This section of the Collaborative Family Law Act specifically refers to cases that might be handled collaboratively and to causes of action that may choose the collaborative law process for resolution before any pleadings are filed. Practitioners of collaborative family law have recognized that agreeing to the collaborative law process before filing for divorce is often more appealing to the parties. The collaborative law process can also be used to resolve premarital and postmarital agreements in which there may never be a filing with a tribunal. Of course, some premarital and postmarital agreements require filings with a tribunal of declaratory judgments, but those are necessarily after the collaborative process has been engaged for the negotiation of the terms of the agreements. This section clearly contemplates the use of the collaborative law process in those instances where there is no pending cause of action in a tribunal when the process begins. Further, this section codifies the limited information that is to be contained in a status report to the tribunal, that is, only whether the case is ongoing or has concluded.

Sec. 15.104. EMERGENCY ORDER

During a collaborative family law process, a tribunal may issue an emergency order to protect the health, safety, welfare, or interest of a party or a family, as defined by Section 71.003. If the emergency order is granted without the agreement of all parties, the granting of the order terminates the collaborative process.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

A filing for emergency relief would appear to terminate the collaborative process under subsection 15.102(d)(2)(A). However, the last sentence of this section indicates that if both parties agree to the entry of emergency orders from a tribunal, the collaborative process may continue. Also, note that the emergency orders are not restricted to health,

safety, or welfare. The addition of the "interest of a party or a family" broadens the possible use of this section. It could be argued that the definition of family is restricted to section 71.003 and that the use of this section is contemplated within the context of Title 4 (Protective Orders and Family Violence). However, since section 15.106 refers to the same definition of family when determining the disqualification of collaborative lawyers, that argument is disproved so that collaborative lawyers may represent a party in a hearing to obtain emergency orders to protect that party's physical, emotional, or financial interest.

Sec. 15.105. EFFECT OF WRITTEN SETTLEMENT AGREEMENT

(a) A settlement agreement under this chapter is enforceable in the same manner as a written settlement agreement under Section 154.071, Civil Practice and Remedies Code.

(b) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative family law settlement agreement if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type, capitalized, or underlined, that the agreement is not subject to revocation; and

(2) is signed by each party to the agreement and the collaborative lawyer of each party.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

The section ensures the enforceability of collaborative law settlement agreements that meet the requirements of this section.

Sec. 15.106. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM; EXCEPTION

(a) In this section, "family" has the meaning assigned by Section 71.003.

(b) Except as provided by Subsection (d), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative family law matter regardless of whether the collaborative lawyer is representing the party for a fee.

(c) Except as provided by Subsection (d) and Sections 15.107 and 15.108, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative family law matter if the collaborative lawyer is disqualified from doing so under Subsection (b).

(d) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) to request a tribunal to approve an agreement resulting from the collaborative family law process; or

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or a family if a successor lawyer is not immediately available to represent that party.

(e) The exception prescribed by Subsection (d) does not apply after the party is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of that party or family.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

The collaborative lawyer may represent the party in an adversarial hearing before a tribunal only if a successor lawyer is not immediately available to represent that party. Once a successor lawyer is available or the emergency measures have been taken, the collaborative lawyer is discharged.

ANNOTATIONS

In re Mabray, 355 S.W.3d 16, 23 (Tex. App.—Houston [1st Dist.] 2010, orig. proceeding). A cooperative law participation agreement that does not contain an attorney withdrawal provision is not a collaborative law participation agreement. Therefore, this section does not disqualify a lawyer from continuing to represent a party once the cooperative law process has ceased.

Sec. 15.107. EXCEPTION FROM DISQUALIFICATION FOR REPRESENTATION OF LOW-INCOME PARTIES

After a collaborative family law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under Section 15.106(b) is associated may represent a party without a fee in the collaborative family law matter or a matter related to the collaborative family law matter if:

(1) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(2) the collaborative family law participation agreement authorizes that representation; and

(3) the collaborative lawyer is isolated from any participation in the collaborative family law matter or a matter related to the collaborative family law matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.108. GOVERNMENTAL ENTITY AS PARTY

(a) In this section, "governmental entity" has the meaning assigned by Section 101.014.

(b) The disqualification prescribed by Section 15.106(b) applies to a collaborative lawyer representing a party that is a governmental entity.

(c) After a collaborative family law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a governmental entity in the collaborative family law matter or a matter related to the collaborative family law matter if:

(1) the collaborative family law participation agreement authorizes that representation; and

(2) the collaborative lawyer is isolated from any participation in the collaborative family law matter or a matter related to the collaborative family law matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

This section seems to anticipate participation in the collaborative law process by child protective agencies or the attorney general's office. If that is to occur, the participation agreement should specifically authorize such representation, and all parties should be aware that such participation will not require those agencies to remain uninvolved in an adversarial way against one or more of the parties in the future.

Sec. 15.109. DISCLOSURE OF INFORMATION

(a) Except as provided by law other than this chapter, during the collaborative family law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party shall update promptly any previously disclosed information that has materially changed.

(b) The parties may define the scope of the disclosure under Subsection (a) during the collaborative family law process.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

This section, as in litigation, puts the burden on each party to request disclosure of information, rather than requiring each party to disclose information without any request.

Sec. 15.110. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED

This chapter does not affect:

(1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) the obligation of a person under other law to report abuse or neglect, abandonment, or exploitation of a child or adult.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.111. INFORMED CONSENT

Before a prospective party signs a collaborative family law participation agreement, a prospective collaborative lawyer must:

(1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative family law process is appropriate for the prospective party's matter;

(2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative family law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, including litigation, mediation, arbitration, or expert evaluation; and

(3) advise the prospective party that:

(A) after signing an agreement, if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative family law matter, the collaborative family law process terminates;

(B) participation in a collaborative family law process is voluntary and any party has the right to terminate unilaterally a collaborative family law process with or without cause; and

(C) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding

related to the collaborative family law matter, except as authorized by Section 15.106(d), 15.107, or 15.108(c).

Added by Acts 2011; 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

It is important not only to help each client with a risk versus benefit analysis of the collaborative process, but also to understand that the opposing party may, with or without cause, terminate the process, resulting in both lawyers having to be replaced. It is an important difference between litigation and the collaborative process as the opposing party has within his or her power the ability to terminate representation by a spouse's lawyer.

Sec. 15.112. FAMILY VIOLENCE

(a) In this section:

(1) "Dating relationship" has the meaning assigned by Section 71.0021(b).

(2) "Family violence" has the meaning assigned by Section 71.004.

(3) "Household" has the meaning assigned by Section 71.005.

(4) "Member of a household" has the meaning assigned by Section 71.006.

(b) Before a prospective party signs a collaborative family law participation agreement in a collaborative family law matter in which another prospective party is a member of the prospective party's family or household or with whom the prospective party has or has had a dating relationship, a prospective collaborative lawyer must make reasonable inquiry regarding whether the prospective party has a history of family violence with the other prospective party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer represents, or the prospective party with whom the collaborative lawyer consults, as applicable, has a history of family violence with another party or prospective party, the lawyer may not begin or continue a collaborative family law process unless:

(1) the party or prospective party requests beginning or continuing a process; and

(2) the collaborative lawyer or prospective collaborative lawyer determines with the party or prospective party what, if any, reasonable steps could be taken to address the concerns regarding family violence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

Lawyers should always screen for domestic violence in family law cases. This section takes that screening one step further by requiring that if a lawyer reasonably believes that there has been a history of family violence, the collaborative process will not be initiated or continued unless the victim wishes to use the collaborative process and reasonable steps to address the concern are taken. These steps might include having all meetings with both parties present in a room in the courthouse or other building secured by metal detectors or by having no meetings in which both parties are physically present.

Sec. 15.113. CONFIDENTIALITY OF COLLABORATIVE FAMILY LAW COMMUNICATION

(a) A collaborative family law communication is confidential to the extent agreed to by the parties in a signed record or as provided by law other than this chapter.

(b) If the parties agree in a signed record, the conduct and demeanor of the parties and nonparty participants, including their collaborative lawyers, are confidential.

(c) If the parties agree in a signed record, communications related to the collaborative family law matter occurring before the signing of the collaborative family law participation agreement are confidential.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

The communications between the lawyers and neutrals before the signing of the participation agreement are cloaked in confidentiality if a participation agreement so specifies and is fully executed. But the issue persists if a participation agreement never is executed. Caution should be exercised in making disclosures before execution of the participation agreement.

Sec. 15.114. PRIVILEGE AGAINST DISCLOSURE OF COLLABORATIVE FAMILY LAW COMMUNICATION

(a) Except as provided by Section 15.115, a collaborative family law communication, whether made before or after the institution of a proceeding, is privileged and not subject to disclosure and may not be used as evidence against a party or nonparty participant in a proceeding.

(b) Any record of a collaborative family law communication is privileged, and neither the parties nor the nonparty participants may be required to testify in a proceeding related to or arising out of the collaborative family law matter or be subject to a process requiring disclosure of privileged information or data related to the collaborative matter.

(c) An oral communication or written material used in or made a part of a collaborative family law process is admissible or discoverable if it is admissible or discoverable independent of the collaborative family law process.

(d) If this section conflicts with other legal requirements for disclosure of communications, records, or materials, the issue of privilege may be presented to the tribunal having jurisdiction of the proceeding to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the tribunal or whether the communications or materials are subject to disclosure. The presentation of the issue of privilege under this subsection does not constitute a termination of the collaborative family law process under Section 15.102(d)(2)(B).

(e) A party or nonparty participant may disclose privileged collaborative family law communications to a party's successor counsel, subject to the terms of confidentiality in the collaborative family law participation agreement. Collaborative family law communications disclosed under this subsection remain privileged.

(f) A person who makes a disclosure or representation about a collaborative family law communication that prejudices the rights of a party or nonparty participant in a proceeding may not assert a privilege under this section. The restriction provided by this subsection applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

Collaborative communications cannot be disclosed even to a successor attorney unless the disclosure is authorized by the participation agreement and, even then, communications are tendered and accepted in the cloak of privi-

lege. Such communications may be used only to rebut prejudice caused by disclosure from another party and only to the extent necessary to rebut such prejudice.

Sec. 15.115. LIMITS OF PRIVILEGE

(a) The privilege prescribed by Section 15.114 does not apply to a collaborative family law communication that is:

(1) in an agreement resulting from the collaborative family law process, evidenced in a record signed by all parties to the agreement;

(2) subject to an express waiver of the privilege in a record or orally during a proceeding if the waiver is made by all parties and nonparty participants;

(3) available to the public under Chapter 552, Government Code, or made during a session of a collaborative family law process that is open, or is required by law to be open, to the public;

(4) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(5) a disclosure of a plan to commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;

(6) a disclosure in a report of:

(A) suspected abuse or neglect of a child to an appropriate agency under Subchapter B, Chapter 261, or in a proceeding regarding the abuse or neglect of a child, except that evidence may be excluded in the case of communications between an attorney and client under Subchapter C, Chapter 261; or

(B) abuse, neglect, or exploitation of an elderly or disabled person to an appropriate agency under Subchapter B, Chapter 48, Human Resources Code; or

(7) sought or offered to prove or disprove:

(A) a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative family law process;

(B) an allegation that the settlement agreement was procured by fraud, duress, coercion, or other dishonest means or that terms of the settlement agreement are illegal;

(C) the necessity and reasonableness of attorney's fees and related expenses incurred during a collaborative family law process or to challenge or defend the enforceability of the collaborative family law settlement agreement; or

(D) a claim against a third person who did not participate in the collaborative family law process.

(b) If a collaborative family law communication is subject to an exception under Subsection (a), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(c) The disclosure or admission of evidence excepted from the privilege under Subsection (a) does not make the evidence or any other collaborative family law communication discoverable or admissible for any other purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

Privilege may not be waived by the parties alone. Waiver requires the joinder of all nonparty participants, such as the collaborative lawyers, the mental health neutral, and the financial neutral, if used in the collaborative case. Since child specialists and business evaluators and other professionals used in the collaborative process are referred to as allied professionals, rather than as participants, it appears that their agreement to waiver of privilege is not required.

Sec. 15.116. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE

(a) Notwithstanding that an agreement fails to meet the requirements of Section 15.101 or that a lawyer has failed to comply with Section 15.111 or 15.112, a tribunal may find that the parties intended to enter into a collaborative family law participation agreement if the parties:

(1) signed a record indicating an intent to enter into a collaborative family law participation agreement; and

(2) reasonably believed the parties were participating in a collaborative family law process.

(b) If a tribunal makes the findings specified in Subsection (a) and determines that the interests of justice require the following action, the tribunal may:

(1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(2) apply the disqualification provisions of Sections 15.106, 15.107, and 15.108; and

(3) apply the collaborative family law privilege under Section 15.114.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

COMMENTS

Even if the participation agreement falls short of the requirements of this chapter and it is proven that the lawyer failed to assess the risk versus reward potential of using the collaborative process with the client and failed to screen for domestic violence and take appropriate steps to address the concerns raised by domestic violence, if the signed agreement indicates "an intention to enter into a collaborative family law participation agreement" and the parties believe they were in the collaborative process, a court may enforce the agreement and afford the parties all the privileges and protections of a case complying with this chapter.

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE A. LIMITATIONS OF MINORITY

CHAPTER 31. REMOVAL OF DISABILITIES OF MINORITY

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Sec. 31.001. REQUIREMENTS

(a) A minor may petition to have the disabilities of minority removed for limited or general purposes if the minor is:

(1) a resident of this state;

(2) 17 years of age, or at least 16 years of age and living separate and apart from the minor's parents, managing conservator, or guardian; and

(3) self-supporting and managing the minor's own financial affairs.

(b) A minor may file suit under this chapter in the minor's own name. The minor need not be represented by next friend.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 31.002. REQUISITES OF PETITION; VERIFICATION

(a) The petition for removal of disabilities of minority must state:

(1) the name, age, and place of residence of the petitioner;

(2) the name and place of residence of each living parent;

(3) the name and place of residence of the guardian of the person and the guardian of the estate, if any;

(4) the name and place of residence of the managing conservator, if any;

(5) the reasons why removal would be in the best interest of the minor; and

(6) the purposes for which removal is requested.

(b) A parent of the petitioner must verify the petition, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by that person. If the person who is to verify the petition is unavailable or that person's whereabouts are unknown, the amicus attorney or attorney ad litem shall verify the petition.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 13, eff. September 1, 2005.

Sec. 31.003. VENUE

The petitioner shall file the petition in the county in which the petitioner resides.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 31.004. REPRESENTATION OF PETITIONER

The court shall appoint an amicus attorney or attorney ad litem to represent the interest of the petitioner at the hearing.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 14, eff. September 1, 2005.

Sec. 31.005. ORDER

The court by order, or the Texas Supreme Court by rule or order, may remove the disabilities of minority of a minor, including any restriction imposed by Chapter 32, if the court or the Texas Supreme Court finds the removal to be in the best interest of the petitioner. The order or rule must state the limited or general purposes for which disabilities are removed.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1999, 76th Leg., ch. 1303, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.006. EFFECT OF GENERAL REMOVAL

Except for specific constitutional and statutory age requirements, a minor whose disabilities are removed for general purposes has the capacity of an adult, including the capacity to contract. Except as provided by federal law, all educational rights accorded to the parent of a student, including the right to make education decisions under Section 151.001(a)(10), transfer to the minor whose disabilities are removed for general purposes.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 2001, 77th Leg., ch. 767, Sec. 9, eff. June 13, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 7.001, eff. September 1, 2015.

Sec. 31.007. REGISTRATION OF ORDER OF ANOTHER STATE OR NATION

(a) A nonresident minor who has had the disabilities of minority removed in the state of the minor's residence may file a certified copy of the order removing disabilities in the deed records of any county in this state.

(b) When a certified copy of the order of a court of another state or nation is filed, the minor has the capacity of an adult, except as provided by Section 31.006 and by the terms of the order.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 31.008. WAIVER OF CITATION

(a) A party to a suit under this chapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) **The** ~~Notwithstanding Section 132.001, Civil Practice and Remedies Code, the~~ waiver must be sworn before a notary public who is not an attorney in the suit **or conform to the requirements for an unsworn declaration under Section 132.001, Civil Practice and Remedies Code**. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

Added by Acts 2015, 84th Leg., R.S., Ch. 198 (S.B. 814), Sec. 2, eff. September 1, 2015. Amended by Acts 2019, 86th Leg., S.B. 891, Sec. 11.01, eff. Sept. 1, 2019.

Section 15.05 of Acts 2019, 86th Leg., S.B. 891 states—

"The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, implement a provision of this Act using other appropriations available for that purpose."

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE A. LIMITATIONS OF MINORITY

CHAPTER 32. CONSENT TO TREATMENT OF CHILD BY NON-PARENT OR CHILD

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SUBCHAPTER A. CONSENT TO MEDICAL, DENTAL, PSYCHOLOGICAL, AND SURGICAL TREATMENT

Sec. 32.001. CONSENT BY NON-PARENT

(a) The following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

(1) a grandparent of the child;

(2) an adult brother or sister of the child;

(3) an adult aunt or uncle of the child;

(4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;

(5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;

(6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;

(7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or

(8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

(b) Except as otherwise provided by this subsection, the Texas Juvenile Justice Department may consent to the medical, dental, psychological, and surgical treatment of a child committed to the department under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary. Consent for medical, dental, psychological, and surgical treatment of a child for whom the Department of Family and Protective Services has been appointed managing conservator and who is committed to the Texas Juvenile Justice Department is governed by Sections 266.004, 266.009, and 266.010.

(c) This section does not apply to consent for the immunization of a child.

(d) A person who consents to the medical treatment of a minor under Subsection (a)(7) or (8) is immune from liability for damages resulting from the examination or treatment of the minor, except to the extent of the person's own acts of negligence. A physician or dentist licensed to practice in this state, or a hospital or medical facility at which a minor is treated is immune from liability for damages resulting from the examination or treatment of a minor under this section, except to the extent of the person's own acts of negligence.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 5, eff. Sept. 1, 1995. Amended by: Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 1, eff. May 23, 2009. Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 37, eff. September 1, 2015.

ANNOTATIONS

Miller v. HCA, Inc., 118 S.W.3d 758, 767–68 (Tex. 2003). "We hold that a physician, who is confronted with emergent circumstances and provides life-sustaining treatment to a minor child, is not liable for not first obtaining consent from the parents. . . . "[I]t is an exception to the general rule that a physician commits a battery by providing medical treatment without consent."

Sec. 32.002. CONSENT FORM

(a) Consent to medical treatment under this subchapter must be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

(b) The consent must include:

(1) the name of the child;

(2) the name of one or both parents, if known, and the name of any managing conservator or guardian of the child;

(3) the name of the person giving consent and the person's relationship to the child;

(4) a statement of the nature of the medical treatment to be given; and

(5) the date the treatment is to begin.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 32.003. CONSENT TO TREATMENT BY CHILD

(a) A child may consent to medical, dental, psychological, and surgical treatment for the child by a licensed physician or dentist if the child:

(1) is on active duty with the armed services of the United States of America;

(2) is:

(A) 16 years of age or older and resides separate and apart from the child's parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of the residence; and

(B) managing the child's own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health, including all diseases within the scope of Section 81.041, Health and Safety Code;

(4) is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy;

(5) consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use;

(6) is unmarried, is the parent of a child, and has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child; or

(7) is serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice, unless the treatment would constitute a prohibited practice under Section 164.052(a)(19), Occupations Code.

(b) Consent by a child to medical, dental, psychological, and surgical treatment under this section is not subject to disaffirmance because of minority.

(c) Consent of the parents, managing conservator, or guardian of a child is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

(d) A licensed physician, dentist, or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment given to or needed by the child.

(e) A physician, dentist, psychologist, hospital, or medical facility is not liable for the examination and treatment of a child under this section except for the provider's or the facility's own acts of negligence.

(f) A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 6, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 821, Sec. 2.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1227 (H.B. 2389), Sec. 2, eff. June 15, 2007.

ANNOTATIONS

In re Doe, 19 S.W.3d 249, 264 (Tex. 2000) (Owen, J., concurring). "There may be risks that are heightened for or unique to an individual. A minor cannot make a sufficiently well-informed decision about an abortion if she does not know the risks to *her* of that procedure. In this regard, the Family Code expressly allows a pregnant, unmarried minor to consent to medical treatment by a physician, short of an abortion itself."

Sec. 32.004. CONSENT TO COUNSELING

(a) A child may consent to counseling for:

(1) suicide prevention;

(2) chemical addiction or dependency; or

(3) sexual, physical, or emotional abuse.

(b) A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a child has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may:

(1) counsel the child without the consent of the child's parents or, if applicable, managing conservator or guardian;

(2) with or without the consent of the child who is a client, advise the child's parents or, if applicable, managing conservator or guardian of the treatment given to or needed by the child; and

(3) rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's own treatment under this section.

(c) Unless consent is obtained as otherwise allowed by law, a physician, psychologist, counselor, or social worker may not counsel a child if consent is prohibited by a court order.

(d) A physician, psychologist, counselor, or social worker counseling a child under this section is not liable for damages except for damages resulting from the person's negligence or wilful misconduct.

(e) A parent, or, if applicable, managing conservator or guardian, who has not consented to counseling treatment of the child is not obligated to compensate a physician, psychologist, counselor, or social worker for counseling services rendered under this section.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 32.005. EXAMINATION WITHOUT CONSENT OF ABUSE OR NEGLECT OF CHILD

(a) Except as provided by Subsection (c), a physician, dentist, or psychologist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent to treatment under this subchapter.

(b) An examination under this section may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests.

(c) Unless consent is obtained as otherwise allowed by law, a physician, dentist, or psychologist may not examine a child:

(1) 16 years of age or older who refuses to consent; or

(2) for whom consent is prohibited by a court order.

(d) A physician, dentist, or psychologist examining a child under this section is not liable for damages except for damages resulting from the physician's or dentist's negligence.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. IMMUNIZATION

Sec. 32.101. WHO MAY CONSENT TO IMMUNIZATION OF CHILD

(a) In addition to persons authorized to consent to immunization under Chapter 151 and Chapter 153, the following persons may consent to the immunization of a child:

(1) a guardian of the child; and

(2) a person authorized under the law of another state or a court order to consent for the child.

(b) If the persons listed in Subsection (a) are not available and the authority to consent is not denied under Subsection (c), consent to the immunization of a child may be given by:

(1) a grandparent of the child;

(2) an adult brother or sister of the child;

(3) an adult aunt or uncle of the child;

(4) a stepparent of the child;

(5) an educational institution in which the child is enrolled that has written authorization to consent for the child from a parent, managing conservator, guardian, or other person who under the law of another state or a court order may consent for the child;

(6) another adult who has actual care, control, and possession of the child and has written authorization to consent for the child from a parent, managing conservator, guardian, or other person who, under the law of another state or a court order, may consent for the child;

(7) a court having jurisdiction of a suit affecting the parent-child relationship of which the minor is the subject;

(8) an adult having actual care, control, and possession of the child under an order of a juvenile court or by commitment by a juvenile court to the care of an agency of the state or county; or

(9) an adult having actual care, control, and possession of the child as the child's primary caregiver.

(c) A person otherwise authorized to consent under Subsection (a) may not consent for the child if the person has actual knowledge that a parent, managing conservator, guardian of the child, or other person who under the law of another state or a court order may consent for the child:

(1) has expressly refused to give consent to the immunization;

(2) has been told not to consent for the child; or

(3) has withdrawn a prior written authorization for the person to consent.

(d) The Texas Juvenile Justice Department may consent to the immunization of a child committed to it if a parent, managing conservator, or guardian of the minor or other person who, under the law of another state or court order, may consent for the minor has been contacted and:

(1) refuses to consent; and

(2) does not expressly deny to the department the authority to consent for the child.

(e) A person who consents under this section shall provide the health care provider with sufficient and accurate health history and other information about the minor for whom the consent is given and, if necessary, sufficient and accurate health history and information about the minor's family to enable the person who may consent to the minor's immunization and the health care provider to determine adequately the risks and benefits inherent in the proposed immunization and to determine whether immunization is advisable.

(f) Consent to immunization must meet the requirements of Section 32.002(a).

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.09(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.02, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 38, eff. September 1, 2015.

ANNOTATIONS

In re Womack, 549 S.W.3d 760 (Tex. App.—Waco 2017, orig. proceeding). A parent with only limited rights and duties to a child can block immunization.

Sec. 32.1011. CONSENT TO IMMUNIZATION BY CHILD

(a) Notwithstanding Section 32.003 or 32.101, a child may consent to the child's own immunization for a disease if:

(1) the child:

(A) is pregnant; or

(B) is the parent of a child and has actual custody of that child; and

(2) the Centers for Disease Control and Prevention recommend or authorize the initial dose of an immunization for that disease to be administered before seven years of age.

(b) Consent to immunization under this section must meet the requirements of Section 32.002(a).

(c) Consent by a child to immunization under this section is not subject to disaffirmance because of minority.

(d) A health care provider or facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's immunization under this section.

(e) To the extent of any conflict between this section and Section 32.003, this section controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1313 (S.B. 63), Sec. 1, eff. June 14, 2013.

Sec. 32.102. INFORMED CONSENT TO IMMUNIZATION

(a) A person authorized to consent to the immunization of a child has the responsibility to ensure that the consent, if given, is an informed consent. The person authorized to consent is not required to be present when the immunization of the child is requested if a consent form that meets the requirements of Section 32.002 has been given to the health care provider.

(b) The responsibility of a health care provider to provide information to a person consenting to immunization is the same as the provider's responsibility to a parent.

(c) As part of the information given in the counseling for informed consent, the health care provider shall provide information to inform the person authorized to consent to immunization of the procedures available under the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. Section 300aa-1 et seq.) to seek possible recovery for unreimbursed expenses for certain injuries arising out of the administration of certain vaccines.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Sec. 32.103 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.09(b), (d), eff. Sept. 1, 1997.

Sec. 32.103. LIMITED LIABILITY FOR IMMUNIZATION

(a) In the absence of wilful misconduct or gross negligence, a health care provider who accepts the health history and other information given by a person who is delegated the authority to consent to the immunization of a child during the informed consent counseling is not liable for an adverse reaction to an immunization or for other injuries to the child resulting from factual errors in the health history or information given by the person to the health care provider.

(b) A person consenting to immunization of a child, a physician, nurse, or other health care provider, or a public health clinic, hospital, or other medical facility is not liable for damages arising from an immunization administered to a child authorized under this subchapter except for injuries resulting from the person's or facility's own acts of negligence.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Sec. 32.104 by Acts 1997, 75th Leg., ch. 165, Sec. 7.09(e), eff. Sept. 1, 1997.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Sec. 32.201. EMERGENCY SHELTER OR CARE FOR MINORS

(a) An emergency shelter facility may provide shelter and care to a minor and the minor's child or children, if any.

(b) An emergency shelter facility may provide shelter or care only during an emergency constituting an immediate danger to the physical health or safety of the minor or the minor's child or children.

(c) Shelter or care provided under this section may not be provided after the 15th day after the date the shelter or care is commenced unless:

(1) the facility receives consent to continue services from the minor in accordance with Section 32.202; or

(2) the minor has qualified for financial assistance under Chapter 31, Human Resources Code, and is on the waiting list for housing assistance.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 2003, 78th Leg., ch. 192, Sec. 1, eff. June 2, 2003.

Sec. 32.202. CONSENT TO EMERGENCY SHELTER OR CARE BY MINOR

(a) A minor may consent to emergency shelter or care to be provided to the minor or the minor's child or children, if any, under Section 32.201(c) if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(b) Consent by a minor to emergency shelter or care under this section is not subject to disaffirmance because of minority.

(c) An emergency shelter facility may, with or without the consent of the minor's parent, managing conservator, or guardian, provide emergency shelter or care to the minor or the minor's child or children under Section 32.201(c).

(d) An emergency shelter facility is not liable for providing emergency shelter or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the facility is liable for the facility's own acts of negligence.

(e) An emergency shelter facility may rely on the minor's written statement containing the grounds on which the minor has capacity to consent to emergency shelter or care.

(f) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

Added by Acts 2003, 78th Leg., ch. 192, Sec. 2, eff. June 2, 2003.

Sec. 32.203. CONSENT BY MINOR TO HOUSING OR CARE PROVIDED THROUGH TRANSITIONAL LIVING PROGRAM

(a) In this section, "transitional living program" means a residential services program for children provided in a residential child-care facility licensed or certified by the Department of Family and Protective Services under Chapter 42, Human Resources Code, that:

(1) is designed to provide basic life skills training and the opportunity to practice those skills, with a goal of basic life skills development toward independent living; and

(2) is not an independent living program.

(b) A minor may consent to housing or care provided to the minor or the minor's child or children, if any, through a transitional living program if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(c) Consent by a minor to housing or care under this section is not subject to disaffirmance because of minority.

(d) A transitional living program may, with or without the consent of the parent, managing conservator, or guardian, provide housing or care to the minor or the minor's child or children.

(e) A transitional living program must attempt to notify the minor's parent, managing conservator, or guardian regarding the minor's location.

(f) A transitional living program is not liable for providing housing or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the program is liable for the program's own acts of negligence.

(g) A transitional living program may rely on a minor's written statement containing the grounds on which the minor has capacity to consent to housing or care provided through the program.

(h) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

Added by Acts 2013, 83rd Leg., R.S., Ch. 587 (S.B. 717), Sec. 1, eff. June 14, 2013.

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE A. LIMITATIONS OF MINORITY

CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

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Sec. 33.001. DEFINITIONS

In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002, Health and Safety Code. This definition, as applied in this chapter, may not be construed to limit a minor's access to contraceptives.

(2) "Fetus" means an individual human organism from fertilization until birth.

(3) "Guardian" means a court-appointed guardian of the person of the minor.

(3–a) "Medical emergency" has the meaning assigned by Section 171.002, Health and Safety Code.

(4) "Physician" means an individual licensed to practice medicine in this state.

(5) "Unemancipated minor" includes a minor who:

(A) is unmarried; and

(B) has not had the disabilities of minority removed under Chapter 31.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 2, eff. Jan. 1, 2016; Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 1, eff. Sept. 1, 2017.

Sec. 33.002. PARENTAL NOTICE

(a) A physician may not perform an abortion on a pregnant unemancipated minor unless:

(1) the physician performing the abortion gives at least 48 hours actual notice, in person or by telephone, of the physician's intent to perform the abortion to:

(A) a parent of the minor, if the minor has no managing conservator or guardian; or

(B) a court-appointed managing conservator or guardian;

(2) the physician who is to perform the abortion receives an order issued by a court under Section 33.003 or 33.004 authorizing the minor to consent to the abortion as provided by Section 33.003 or 33.004; or

(3) the physician who is to perform the abortion:

(A) concludes that a medical emergency exists;

(B) certifies in writing to the Department of State Health Services and in the patient's medical record the medical indications supporting the physician's judgment that a medical emergency exists; and

(C) provides the notice required by Section 33.0022.

(b) If a person to whom notice may be given under Subsection (a)(1) cannot be notified after a reasonable effort, a physician may perform an abortion if the physician gives 48 hours constructive notice, by certified mail, restricted delivery, sent to the last known address, to the person to whom notice may be given under Subsection (a)(1). The period under this subsection begins when the notice is mailed. If the person required to be notified is not notified within the 48-hour period, the abortion may proceed even if the notice by mail is not received.

(c) The requirement that 48 hours actual notice be provided under this section may be waived by an affidavit of:

(1) a parent of the minor, if the minor has no managing conservator or guardian; or

(2) a court-appointed managing conservator or guardian.

(d) A physician may execute for inclusion in the minor's medical record an affidavit stating that, according to the best information and belief of the physician, notice or constructive notice has been provided as required by this section. Execution of an affidavit under this subsection creates a presumption that the requirements of this section have been satisfied.

(e) The Department of State Health Services shall prepare a form to be used for making the certification required by Subsection (a)(3)(B).

(f) A certification required by Subsection (a)(3)(B) is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. Personal or identifying information about the minor, including her name, address, or social security number, may not be included in a certification under Subsection (a)(3)(B). The physician must keep the medical records on the minor in compliance with the rules adopted by the Texas Medical Board under Section 153.003, Occupations Code.

(g) A physician who intentionally performs an abortion on a pregnant unemancipated minor in violation of this section commits an offense. An offense under this subsection is punishable by a fine not to exceed $10,000. In this subsection, "intentionally" has the meaning assigned by Section 6.03(a), Penal Code.

(h) It is a defense to prosecution under this section that the minor falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid proof of identity and age described by Subsection (k) such that a reasonable person under similar circumstances would have relied on the representation. The defense does not apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or failed to use due diligence in determining the minor's age or identity or failed to use due diligence in determining the minor's age or identity. In this subsection, "defense" has the meaning and application assigned by Section 2.03, Penal Code.

(i) In relation to the trial of an offense under this section in which the conduct charged involves a conclusion made by the physician under Subsection (a)(3)(A), the defendant may seek a hearing before the Texas Medical Board on whether the physician's conduct was necessary because of a medical emergency. The findings of the Texas Medical Board under this subsection are admissible on that issue in the trial of the defendant. Notwithstanding any other reason for a continuance provided under the Code of Criminal Procedure or other law, on motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit a hearing under this subsection to take place.

(j) A physician shall use due diligence to determine that any woman on which the physician performs an abortion who claims to have reached the age of majority or to have had the disabilities of minority removed has, in fact, reached the age of majority or has had the disabilities of minority removed.

(k) For the purposes of this section, "due diligence" includes requesting proof of identity and age described by Section 2.005(b) or a copy of the court order removing disabilities of minority.

(l) If proof of identity and age cannot be provided, the physician shall provide information on how to obtain proof of identity and age. If the woman is subsequently unable to obtain proof of identity and age and the physician chooses to perform the abortion, the physician shall document that proof of identity and age was not obtained and report to the Department of State Health Services that proof of identity and age was not obtained for the woman on whom the abortion was performed. The department shall report annually to the legislature regarding the number of abortions performed without proof of identity and age.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.741, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 3, eff. January 1, 2016.

Sec. 33.0021. CONSENT REQUIRED

A physician may not perform an abortion in violation of Section 164.052(a)(19), Occupations Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 4, eff. January 1, 2016.

Sec. 33.0022. MEDICAL EMERGENCY NOTIFICATION; AFFIDAVIT FOR MEDICAL RECORD

(a) If the physician who is to perform the abortion concludes under Section 33.002(a)(3)(A) that a medical emergency exists and that there is insufficient time to provide the notice required by Section 33.002 or obtain the consent required by Section 33.0021, the physician shall make a reasonable effort to inform, in person or by telephone, the parent, managing conservator, or guardian of the unemancipated minor within 24 hours after the time a medical emergency abortion is performed on the minor of:

(1) the performance of the abortion; and

(2) the basis for the physician's determination that a medical emergency existed that required the performance of a medical emergency abortion without fulfilling the requirements of Section 33.002 or 33.0021.

(b) A physician who performs an abortion as described by Subsection (a), not later than 48 hours after the abortion is performed, shall send a written notice that a medical emergency occurred and the ability of the parent, managing conservator, or guardian to contact the physician for more information and medical records, to the last known address of the parent, managing conservator, or guardian by certified mail, restricted delivery, return receipt requested. The physician may rely on last known address information if a reasonable and prudent person, under similar circumstances, would rely on the information as sufficient evidence that the parent, managing conservator, or guardian resides at that address. The physician shall keep in the minor's medical record:

(1) the return receipt from the written notice; or

(2) if the notice was returned as undeliverable, the notice.

(c) A physician who performs an abortion on an unemancipated minor during a medical emergency as described by Subsection (a) shall execute for inclusion in the medical record of the minor an affidavit that explains the specific medical emergency that necessitated the immediate abortion.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 4, eff. January 1, 2016.

Sec. 33.003. JUDICIAL APPROVAL

(a) A pregnant minor may file an application for a court order authorizing the minor to consent to the performance of an abortion without notification to and consent of a parent, managing conservator, or guardian.

(b) The application may be filed in:

(1) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor's county of residence;

(2) if the minor's parent, managing conservator, or guardian is a presiding judge of a court described by Subdivision (1):

(A) a county court at law, court having probate jurisdiction, or district court, including a family district court, in a contiguous county; or

(B) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county where the minor intends to obtain the abortion;

(3) if the minor's county of residence has a population of less than 10,000:

(A) a court described by Subdivision (1);

(B) a county court at law, court having probate jurisdiction, or district court, including a family district court, in a contiguous county; or

(C) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the facility at which the minor intends to obtain the abortion is located; or

(4) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the facility at which the minor intends to obtain the abortion is located, if the minor is not a resident of this state.

(c) The application must:

(1) be made under oath;

(2) include:

(A) a statement that the minor is pregnant;

(B) a statement that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31;

(C) a statement that the minor wishes to have an abortion without the notification to and consent of a parent, managing conservator, or guardian;

(D) a statement as to whether the minor has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney; and

(E) a statement about the minor's current residence, including the minor's physical address, mailing address, and telephone number; and

(3) be accompanied by the sworn statement of the minor's attorney under Subsection (r), if the minor has retained an attorney to assist the minor with filing the application under this section.

(d) The clerk of the court shall deliver a courtesy copy of the application made under this section to the judge who is to hear the application.

(e) The court shall appoint a guardian ad litem for the minor who shall represent the best interest of the minor. If the minor has not retained an attorney, the court shall appoint an attorney to represent the minor. The guardian ad litem may not also serve as the minor's attorney ad litem.

(f) The court may appoint to serve as guardian ad litem:

(1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3);

(2) a psychiatrist or an individual licensed or certified as a psychologist under Chapter 501, Occupations Code;

(3) an appropriate employee of the Department of Family and Protective Services;

(4) a member of the clergy; or

(5) another appropriate person selected by the court.

(g) The court shall fix a time for a hearing on an application filed under Subsection (a) and shall keep a record of all testimony and other oral proceedings in the action.

(g–1) The pregnant minor must appear before the court in person and may not appear using videoconferencing, telephone conferencing, or other remote electronic means.

(h) The court shall rule on an application submitted under this section and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the application is filed with the court. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the minor states she is ready to proceed to hearing. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly, regardless of whether the minor is granted an extension under this subsection.

(i) The court shall determine by clear and convincing evidence, as described by Section 101.007, whether:

(1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian; or

(2) the notification and attempt to obtain consent would not be in the best interest of the minor.

(i–1) In determining whether the minor meets the requirements of Subsection (i)(1), the court shall consider the experience, perspective, and judgment of the minor. The court may:

(1) consider all relevant factors, including:

(A) the minor's age;

(B) the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; and

(C) steps taken by the minor to explore her options and the consequences of those options;

(2) inquire as to the minor's reasons for seeking an abortion;

(3) consider the degree to which the minor is informed about the state-published informational materials described by Chapter 171, Health and Safety Code; and

(4) require the minor to be evaluated by a licensed mental health counselor, who shall return the evaluation to the court for review within three business days.

(i–2) In determining whether the notification and the attempt to obtain consent would not be in the best interest of the minor, the court may inquire as to:

(1) the minor's reasons for not wanting to notify and obtain consent from a parent, managing conservator, or guardian;

(2) whether notification or the attempt to obtain consent may lead to physical or sexual abuse;

(3) whether the pregnancy was the result of sexual abuse by a parent, managing conservator, or guardian; and

(4) any history of physical or sexual abuse from a parent, managing conservator, or guardian.

(i–3) The court shall enter an order authorizing the minor to consent to the performance of the abortion without notification to and consent of a parent, managing conservator, or guardian and shall execute the required forms if the court finds by clear and convincing evidence, as defined by Section 101.007, that:

(1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian; or

(2) the notification and attempt to obtain consent would not be in the best interest of the minor.

(j) If the court finds that the minor does not meet the requirements of Subsection (i–3), the court may not authorize the minor to consent to an abortion without the notification authorized under Section 33.002(a)(1) and consent under Section 33.0021.

(k) The court may not notify a parent, managing conservator, or guardian that the minor is pregnant or that the minor wants to have an abortion. The court proceedings shall be conducted in a manner that protects the confidentiality of the identity of the minor. The application and all other court documents pertaining to the proceedings are confidential and privileged and are not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. Confidential records pertaining to a minor under this subsection may be disclosed to the minor.

(l) An order of the court issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The order may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, the physician who is to perform the abortion, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor. The supreme court may adopt rules to permit confidential docketing of an application under this section.

(l–1) The clerk of the court, at intervals prescribed by the Office of Court Administration of the Texas Judicial System, shall submit a report to the office that includes, for each case filed under this section:

(1) the case number and style;

(2) the applicant's county of residence;

(3) the court of appeals district in which the proceeding occurred;

(4) the date of filing;

(5) the date of disposition; and

(6) the disposition of the case.

(l–2) The Office of Court Administration of the Texas Judicial System shall annually compile and publish a report aggregating the data received under Subsections (l–1)(3) and (6). A report submitted under Subsection (l–1) is confidential and privileged and is not subject to disclosure under Chapter 552,

Government Code, or to discovery, subpoena, or other legal process. A report under this subsection must protect the confidentiality of:

(1) the identity of all minors and judges who are the subject of the report; and

(2) the information described by Subsection (l–1)(1).

(m) The clerk of the supreme court shall prescribe the application form to be used by the minor filing an application under this section.

(n) A filing fee is not required of and court costs may not be assessed against a minor filing an application under this section.

(o) A minor who has filed an application under this section may not withdraw or otherwise nonsuit her application without the permission of the court.

(p) Except as otherwise provided by Subsection (q), a minor who has filed an application and has obtained a determination by the court as described by Subsection (i) may not initiate a new application proceeding and the prior proceeding is res judicata of the issue relating to the determination of whether the minor may or may not be authorized to consent to the performance of an abortion without notification to and consent of a parent, managing conservator, or guardian.

(q) A minor whose application is denied may subsequently submit an application to the court that denied the application if the minor shows that there has been a material change in circumstances since the time the court denied the application.

(r) An attorney retained by the minor to assist her in filing an application under this section shall fully inform himself or herself of the minor's prior application history, including the representations made by the minor in the application regarding her address, proper venue in the county in which the application is filed, and whether a prior application has been filed and initiated. If an attorney assists the minor in the application process in any way, with or without payment, the attorney representing the minor must attest to the truth of the minor's claims regarding the venue and prior applications in a sworn statement.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.742, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 1, eff. May 21, 2011. Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 5, eff. January 1, 2016.

ANNOTATIONS

In re Jane Doe 1 (I), 19 S.W.3d 249, 256 (Tex. 2000). The Texas Supreme Court determined that for a minor to be "mature and sufficiently well informed to make the decision to have an abortion" under section 33.003, "the minor must make, at a minimum, three showings. . . . First, she must show she has obtained information about health risks from a health-care provider and that she understands those risks. . . . Second, she must show she understands the alternatives to abortion and their implications. . . . Third, she must show she is aware of the emotional and psychological aspects of undergoing an abortion . . . . "

In re Jane Doe 1 (II), 19 S.W.3d 346, 357 (Tex. 2000). Section 33.003 requires a minor to prove (1) that she is mature and (2) that she is sufficiently well informed. On appeal, "a negative finding on one element . . . is alone sufficient to support denial . . . . [A] deemed finding on an omitted element against the minor would be contrary to the Legislature's intent . . . . "

In re Jane Doe 2, 19 S.W.3d 278, 282 (Tex. 2000). A court must determine whether parental "notification would not be in the best interest of the minor . . . . To determine [this], the trial court should weigh the advantages and disadvantages of parental notification in the minor's specific situation . . . [and] should consider all relevant circumstances."

In re Jane Doe 4 (I), 19 S.W.3d 322, 326 (Tex. 2000). For evidence to establish as a matter of law that parental notification would not be in a minor's best interest, testimony must be clear and elaborate on all circumstances concerning her best interest.

In re Jane Doe 4 (II), 19 S.W.3d 337, 339 (Tex. 2000). To provide sufficient evidence to establish as a matter of law that a minor has "obtained information from a health-care provider about the risks associated with abortion and that she understands [them]," the minor must demonstrate a "comprehension about the specific risks" associated with the abortion.

Sec. 33.004. APPEAL

(a) A minor whose application under Section 33.003 is denied may appeal to the court of appeals having jurisdiction over civil matters in the county in which the application was filed. On receipt of a notice of appeal, the clerk of the court that denied the application shall deliver a copy of the notice of appeal and record on appeal to the clerk of the court of appeals. On receipt of the notice and record, the clerk of the court of appeals shall place the appeal on the docket of the court.

(b) The court of appeals shall rule on an appeal under this section not later than 5 p.m. on the fifth business day after the date the notice of appeal is filed with the court that denied the application. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on the appeal not later than 5 p.m. on the fifth business day after the date the minor states she is ready to proceed. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly, regardless of whether the minor is granted an extension under this subsection.

(c) A ruling of the court of appeals issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The ruling may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the ruling by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor. The supreme court may adopt rules to permit confidential docketing of an appeal under this section.

(c–1) Notwithstanding Subsection (c), the court of appeals may publish an opinion relating to a ruling under this section if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor.

(d) The clerk of the supreme court shall prescribe the notice of appeal form to be used by the minor appealing a judgment under this section.

(e) A filing fee is not required of and court costs may not be assessed against a minor filing an appeal under this section.

(f) An expedited confidential appeal shall be available to any pregnant minor to whom a court of appeals denies an application to authorize the minor to consent to the performance of an abortion without notification to or consent of a parent, managing conservator, or guardian.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 6, eff. January 1, 2016.

ANNOTATIONS

In re Jane Doe 10, 78 S.W.3d 338, 341 (Tex. 2002). "Under [subsection 33.003(h)'s] plain language, it is insufficient for a trial court to simply issue a ruling on the application—it must also issue written findings of fact and conclusions of law; otherwise, the application is deemed to be granted," even if contrary to the trial court's judgment.

In re Jane Doe 11, 92 S.W.3d 511, 513 (Tex. 2002). If an application for bypass is deemed granted under section 33.003 for failure of the court to issue findings of facts and conclusions of law, the appellate court lacks jurisdiction to hear an appeal on this matter. Pursuant to Parental Notification Rule 2.2g, "[U]pon the minor's request, the clerk must instanter issue a certificate . . . stating that the application is deemed by statute to be granted."

Sec. 33.005. AFFIDAVIT OF PHYSICIAN

(a) A physician may execute for inclusion in the minor's medical record an affidavit stating that, after reasonable inquiry, it is the belief of the physician that:

(1) the minor has made an application or filed a notice of an appeal with a court under this chapter;

(2) the deadline for court action imposed by this chapter has passed; and

(3) the physician has been notified that the court has not denied the application or appeal.

(b) A physician who in good faith has executed an affidavit under Subsection (a) may rely on the affidavit and may perform the abortion as if the court had issued an order granting the application or appeal.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.006. GUARDIAN AD LITEM IMMUNITY

A guardian ad litem appointed under this chapter and acting in the course and scope of the appointment is not liable for damages arising from an act or omission of the guardian ad litem committed in good faith. The immunity granted by this section does not apply if the conduct of the guardian ad litem is committed in a manner described by Sections 107.003(b)(1)–(4).

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.0065. RECORDS

The clerk of the court shall retain the records for each case before the court under this chapter in accordance with rules for civil cases and grant access to the records to the minor who is the subject of the proceeding.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 7, eff. January 1, 2016.

Sec. 33.007. COSTS PAID BY STATE

(a) A court acting under Section 33.003 or 33.004 may issue an order requiring the state to pay:

(1) the cost of any attorney ad litem and any guardian ad litem appointed for the minor;

(2) notwithstanding Sections 33.003(n) and 33.004(e), the costs of court associated with the application or appeal; and

(3) any court reporter's fees incurred.

(b) An order issued under Subsection (a) must be directed to the comptroller, who shall pay the amount ordered from funds appropriated to the Texas Department of Health.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR; INVESTIGATION AND ASSISTANCE

(a) If a minor claims to have been physically or sexually abused or a physician or physician's agent has reason to believe that a minor has been physically or sexually abused, the physician or physician's agent shall immediately report the suspected abuse and the name of the abuser to the Department of Family and Protective Services and to a local law enforcement agency and shall refer the minor to the department for services or intervention that may be in the best interest of the minor. The local law enforcement agency shall respond and shall write a report within 24 hours of being notified of the alleged abuse. A report shall be made regardless of whether the local law enforcement agency knows or suspects that a report about the abuse may have previously been made.

(b) The appropriate local law enforcement agency and the Department of Family and Protective Services shall investigate suspected abuse reported under this section and, if warranted, shall refer the case to the appropriate prosecuting authority.

(c) When the local law enforcement agency responds to the report of physical or sexual abuse as required by Subsection (a), a law enforcement officer or appropriate agent from the Department of Family and Protective Services may take emergency possession of the minor without a court order to protect the health and safety of the minor as described by Chapter 262.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 2, eff. May 21, 2011. Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 8, eff. January 1, 2016.

Sec. 33.0085. DUTY OF JUDGE OR JUSTICE TO REPORT ABUSE OF MINOR

(a) Notwithstanding any other law, a judge or justice who, as a result of court proceedings conducted under Section 33.003 or 33.004, has reason to believe that a minor has been or may be physically or sexually abused shall:

(1) immediately report the suspected abuse and the name of the abuser to the Department of Family and Protective Services and to a local law enforcement agency; and

(2) refer the minor to the department for services or intervention that may be in the best interest of the minor.

(b) The appropriate local law enforcement agency and the Department of Family and Protective Services shall investigate suspected abuse reported under this section and, if warranted, shall refer the case to the appropriate prosecuting authority.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 9, eff. January 1, 2016.

Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR

A court or the guardian ad litem or attorney ad litem for the minor shall report conduct reasonably believed to violate Section 21.02, 22.011, 22.021, or 25.02, Penal Code, based on information obtained during a confidential court proceeding held under this chapter to:

(1) any local or state law enforcement agency;

(2) the Department of Family and Protective Services, if the alleged conduct involves a person responsible for the care, custody, or welfare of the child;

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged conduct occurred, if the alleged conduct occurred in a facility operated, licensed, certified, or registered by a state agency; or

(4) an appropriate agency designated by the court.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.27, eff. September 1, 2007.

Sec. 33.010. CONFIDENTIALITY

Notwithstanding any other law, information obtained by the Department of Family and Protective Services or another entity under Section 33.008, 33.0085, or 33.009 is confidential except to the extent necessary to prove a violation of Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.28, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 10, eff. January 1, 2016.

Sec. 33.011. INFORMATION RELATING TO JUDICIAL BYPASS

The Texas Department of Health shall produce and distribute informational materials that explain the rights of a minor under this chapter. The materials must explain the procedures established by Sections 33.003 and 33.004 and must be made available in English and in Spanish. The material provided by the department shall also provide information relating to alternatives to abortion and health risks associated with abortion.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.012. CIVIL PENALTY

(a) A person who is found to have intentionally, knowingly, recklessly, or with gross negligence violated this chapter is liable to this state for a civil penalty of not less than $2,500 and not more than $10,000.

(b) Each performance or attempted performance of an abortion in violation of this chapter is a separate violation.

(c) A civil penalty may not be assessed against:

(1) a minor on whom an abortion is performed or attempted; or

(2) a judge or justice hearing a court proceeding conducted under Section 33.003 or 33.004.

(d) It is not a defense to an action brought under this section that the minor gave informed and voluntary consent.

(e) The attorney general shall bring an action to collect a penalty under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

Sec. 33.013. CAPACITY TO CONSENT

An unemancipated minor does not have the capacity to consent to any action that violates this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

Sec. 33.014. ATTORNEY GENERAL TO ENFORCE

The attorney general shall enforce this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE A. LIMITATIONS OF MINORITY

CHAPTER 34. AUTHORIZATION AGREEMENT FOR NONPARENT ADULT CAREGIVER

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RESOURCES

Warren Cole, *Legislative Update*, Adv. Fam. L. (2017).

John W. Ellis, *Yours, Mine, Ours? Why the Texas Legislature Should Simplify Caretaker Consent Capabilities for Minor Children and the Implications of the Addition of Chapter 34 to the Texas Family Code*, 42 Tex. Tech L. Rev. 987 (2010).

Sec. 34.0015. DEFINITIONS

In this chapter:

(1) "Adult caregiver" means an adult person whom a parent has authorized to provide temporary care for a child under this chapter.

(2) "Parent" has the meaning assigned by Section 101.024.

Added by Acts 2011, 82nd Leg., R.S., Ch. 897 (S.B. 482), Sec. 1, eff. September 1, 2011. Amended by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 2, eff. Sept. 1, 2017.

Sec. 34.002. AUTHORIZATION AGREEMENT

(a) A parent or both parents of a child may enter into an authorization agreement with an adult caregiver to authorize the adult caregiver to perform the following acts in regard to the child:

(1) to authorize medical, dental, psychological, or surgical treatment and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;

(2) to obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;

(3) to enroll the child in a day-care program or preschool or in a public or private elementary or secondary school;

(4) to authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities;

(5) to authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;

(6) to authorize employment of the child;

(7) to apply for and receive public benefits on behalf of the child; and

(8) to obtain:

(A) copies or originals of state-issued personal identification documents for the child, including the child's birth certificate; and

(B) to the extent authorized under federal law, copies or originals of federally issued personal identification documents for the child, including the child's social security card.

(b) To the extent of any conflict or inconsistency between this chapter and any other law relating to the eligibility requirements other than parental consent to obtain a service under Subsection (a), the other law controls.

(c) An authorization agreement under this chapter does not confer on an adult caregiver the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child.

(d) Only one authorization agreement may be in effect for a child at any time. An authorization agreement is void if it is executed while a prior authorization agreement remains in effect.

Added by Acts 2009, 81st Leg., R.S., Ch. 815 (S.B. 1598), Sec. 1, eff. June 19, 2009. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 484 (H.B. 848), Sec. 2, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 897 (S.B. 482), Sec.

2, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1167 (S.B. 821), Sec. 1, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 3, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 885 (H.B. 3052), Sec. 2, eff. Sept. 1, 2017.

Sec. 34.0021. AUTHORIZATION AGREEMENT BY PARENT IN CHILD PROTECTIVE SERVICES CASE

A parent may enter into an authorization agreement with an adult caregiver with whom a child is placed under a parental child safety placement agreement approved by the Department of Family and Protective Services to allow the person to perform the acts described by Section 34.002(a) with regard to the child:

(1) during an investigation of abuse or neglect; or

(2) while the department is providing services to the parent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 484 (H.B. 848), Sec. 3, eff. September 1, 2011. Amended by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 4, eff. Sept. 1, 2017.

RESOURCES

Sandra D. Hachem, *2017 Texas Legislative Update in Child Welfare Law*, Adv. Fam. L. (2017).

Sec. 34.0022. INAPPLICABILITY OF CERTAIN LAWS

(a) An authorization agreement executed under this chapter between a child's parent and an adult caregiver does not subject the adult caregiver to any law or rule governing the licensing or regulation of a residential child-care facility under Chapter 42, Human Resources Code.

(b) A child who is the subject of an authorization agreement executed under this chapter is not considered to be placed in foster care and the parties to the authorization agreement are not subject to any law or rule governing foster care providers.

Added by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 5, eff. Sept. 1, 2017.

Sec. 34.003. CONTENTS OF AUTHORIZATION AGREEMENT

(a) The authorization agreement must contain:

(1) the following information from the adult caregiver:

(A) the name and signature of the adult caregiver;

(B) the adult caregiver's relationship to the child; and

(C) the adult caregiver's current physical address and telephone number or the best way to contact the adult caregiver;

(2) the following information from the parent:

(A) the name and signature of the parent; and

(B) the parent's current address and telephone number or the best way to contact the parent;

(3) the information in Subdivision (2) with respect to the other parent, if applicable;

(4) a statement that the adult caregiver has been given authorization to perform the functions listed in Section 34.002(a) as a result of a voluntary action of the parent and that the adult caregiver has voluntarily assumed the responsibility of performing those functions;

(5) statements that neither the parent nor the adult caregiver has knowledge that a parent, guardian, custodian, licensed child-placing agency, or other authorized agency asserts any claim or authority inconsistent with the authorization agreement under this chapter with regard to actual physical possession or care, custody, or control of the child;

(6) statements that:

(A) to the best of the parent's and adult caregiver's knowledge:

(i) there is no court order or pending suit affecting the parent-child relationship concerning the child;

(ii) there is no pending litigation in any court concerning:

(a) custody, possession, or placement of the child; or

(b) access to or visitation with the child; and

(iii) a court does not have continuing jurisdiction concerning the child; or

(B) the court with continuing jurisdiction concerning the child has given written approval for the execution of the authorization agreement accompanied by the following information:

(i) the county in which the court is located;

(ii) the number of the court; and

(iii) the cause number in which the order was issued or the litigation is pending;

(7) a statement that to the best of the parent's and adult caregiver's knowledge there is no current, valid authorization agreement regarding the child;

(8) a statement that the authorization is made in conformance with this chapter;

(9) a statement that the parent and the adult caregiver understand that each party to the authorization agreement is required by law to immediately provide to each other party information regarding any change in the party's address or contact information;

(10) a statement by the parent that:

(A) indicates the authorization agreement is for a term of:

(i) six months from the date the parties enter into the agreement, which renews automatically for six-month terms unless the agreement is terminated as provided by Section 34.008; or

(ii) the time provided in the agreement with a specific expiration date earlier than six months after the date the parties enter into the agreement; and

(B) identifies the circumstances under which the authorization agreement may be:

(i) terminated as provided by Section 34.008 before the term of the agreement expires; or

(ii) continued beyond the term of the agreement by a court as provided by Section 34.008(b); and

(11) space for the signature and seal of a notary public.

(b) The authorization agreement must contain the following warnings and disclosures:

(1) that the authorization agreement is an important legal document;

(2) that the parent and the adult caregiver must read all of the warnings and disclosures before signing the authorization agreement;

(3) that the persons signing the authorization agreement are not required to consult an attorney but are advised to do so;

(4) that the parent's rights as a parent may be adversely affected by placing or leaving the parent's child with another person;

(5) that the authorization agreement does not confer on the adult caregiver the rights of a managing or possessory conservator or legal guardian;

(6) that a parent who is a party to the authorization agreement may terminate the authorization agreement and resume custody, possession, care, and control of the child on demand and that at any time the parent may request the return of the child;

(7) that failure by the adult caregiver to return the child to the parent immediately on request may have criminal and civil consequences;

(8) that, under other applicable law, the adult caregiver may be liable for certain expenses relating to the child in the adult caregiver's care but that the parent still retains the parental obligation to support the child;

(9) that, in certain circumstances, the authorization agreement may not be entered into without written permission of the court;

(10) that the authorization agreement may be terminated by certain court orders affecting the child;

(11) that the authorization agreement does not supersede, invalidate, or terminate any prior authorization agreement regarding the child;

(12) that the authorization agreement is void if a prior authorization agreement regarding the child is in effect and has not expired or been terminated;

(13) that, except as provided by Section 34.005(a–2), the authorization agreement is void unless not later than the 10th day after the date the authorization agreement is signed, the parties mail to a parent who was not a party to the authorization agreement at the parent's last known address, if the parent is living and the parent's parental rights have not been terminated:

(A) one copy of the authorization agreement by certified mail, return receipt requested, or international registered mail, return receipt requested, as applicable; and

(B) one copy of the authorization agreement by first class mail or international first class mail, as applicable; and

(14) that the authorization agreement does not confer on an adult caregiver the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child.

Added by Acts 2009, 81st Leg., R.S., Ch. 815 (S.B. 1598), Sec. 1, eff. June 19, 2009. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 897 (S.B. 482), Sec. 3, eff. September 1, 2011. Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 6, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 885 (H.B. 3052), Sec. 3, eff. Sept. 1, 2017.

ANNOTATIONS

Jasek v. Texas Department of Family & Protective Services, 348 S.W.3d 523, 533 (Tex. App.—Austin 2011, no pet.). In the context of "actual physical possession," "the law uses the term 'actual' to indicate something that exists in fact, as opposed to something that is a function of legal duties or imputation."

RESOURCES

Cindy V. Tisdale, *Texas Legislative Update—Family Law*, State Bar Col. Summer School (2017).

Sec. 34.004. EXECUTION OF AUTHORIZATION AGREEMENT

(a) The authorization agreement must be signed and sworn to before a notary public by the parent and the adult caregiver.

(b) A parent may not execute an authorization agreement without a written order by the appropriate court if:

(1) there is a court order or pending suit affecting the parent-child relationship concerning the child;

(2) there is pending litigation in any court concerning:

(A) custody, possession, or placement of the child; or

(B) access to or visitation with the child; or

(3) a court has continuing, exclusive jurisdiction over the child.

(c) An authorization agreement obtained in violation of Subsection (b) is void.

Added by Acts 2009, 81st Leg., R.S., Ch. 815 (S.B. 1598), Sec. 1, eff. June 19, 2009. Amended by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 7, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 885 (H.B. 3052), Sec. 4, eff. Sept. 1, 2017.

Sec. 34.005. DUTIES OF PARTIES TO AUTHORIZATION AGREEMENT

(a) If both parents did not sign the authorization agreement, not later than the 10th day after the date the authorization agreement is executed the parties shall mail to the parent who was not a party to the authorization agreement at the parent's last known address, if that parent is living and that parent's parental rights have not been terminated:

(1) one copy of the executed authorization agreement by certified mail, return receipt requested, or international registered mail, return receipt requested, as applicable; and

(2) one copy of the executed authorization agreement by first class mail or international first class mail, as applicable.

(a–1) Except as otherwise provided by Subsection (a–2), an authorization agreement is void if the parties fail to comply with Subsection (a).

(a–2) Subsection (a) does not apply to an authorization agreement if the parent who was not a party to the authorization agreement:

(1) does not have court-ordered possession of or access to the child who is the subject of the authorization agreement; and

(2) has previously committed an act of family violence, as defined by Section 71.004, or assault against the parent who is a party to the authorization agreement, the child who is

the subject of the authorization agreement, or another child of the parent who is a party to the authorization agreement, as documented by one or more of the following:

(A) the issuance of a protective order against the parent who was not a party to the authorization agreement as provided under Chapter 85 or under a similar law of another state; or

(B) the conviction of the parent who was not a party to the authorization agreement of an offense under Title 5, Penal Code, or of another criminal offense in this state or in another state an element of which involves a violent act or prohibited sexual conduct.

(b) A party to the authorization agreement shall immediately inform each other party of any change in the party's address or contact information. If a party fails to comply with this subsection, the authorization agreement is voidable by the other party.

Added by Acts 2009, 81st Leg., R.S., Ch. 815 (S.B. 1598), Sec. 1, eff. June 19, 2009. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 897 (S.B. 482), Sec. 4, eff. September 1, 2011. Acts 2017, 85th Leg., R.S., Ch. 885 (H.B. 3052), Sec. 5, eff. Sept. 1, 2017.

COMMENTS

Tex. Penal Code tit. 5 has five chapters: chapter 19, Criminal Homicide; chapter 20, Kidnapping, Unlawful Restraint, and Smuggling of Persons; chapter 20A, Trafficking of Persons; chapter 21, Sexual Offenses; and chapter 22, Assaultive Offenses.

Sec. 34.006. AUTHORIZATION VOIDABLE

An authorization agreement is voidable by a party if the other party knowingly:

(1) obtained the authorization agreement by fraud, duress, or misrepresentation; or

(2) made a false statement on the authorization agreement.

Added by Acts 2009, 81st Leg., R.S., Ch. 815 (S.B. 1598), Sec. 1, eff. June 19, 2009.

Sec. 34.007. EFFECT OF AUTHORIZATION AGREEMENT

(a) A person who is not a party to the authorization agreement who relies in good faith on an authorization agreement under this chapter, without actual knowledge that the authorization agreement is void, revoked, or invalid, is not subject to civil or criminal liability to any person, and is not subject to professional disciplinary action, for that reliance if the agreement is completed as required by this chapter.

(b) The authorization agreement does not affect the rights of the child's parent or legal guardian regarding the care, custody, and control of the child, and does not mean that the adult caregiver has legal custody of the child.

(c) An authorization agreement executed under this chapter does not confer or affect standing or a right of intervention in any proceeding under Title 5.

Added by Acts 2009, 81st Leg., R.S., Ch. 815 (S.B. 1598), Sec. 1, eff. June 19, 2009. Amended by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 8, eff. Sept. 1, 2017.

ANNOTATIONS

Jasek v. Texas Department of Family & Protective Services, 348 S.W.3d 523, 532 (Tex. App.—Austin 2011, no pet.). "The family code recognizes a distinction between actual knowledge and constructive knowledge."

RESOURCES

Warren Cole, *2017 Legislative Update: Family Law*, State Bar Col. Summer School (2017).

Sandra D. Hachem, *2017 Texas Legislative Update in Child Welfare Law*, Adv. Fam. L. (2017).

Sec. 34.0075. TERM OF AUTHORIZATION AGREEMENT

An authorization agreement executed under this chapter is for a term of six months from the date the parties enter into the agreement and renews automatically for six-month terms unless:

(1) an earlier expiration date is stated in the authorization agreement;

(2) the authorization agreement is terminated as provided by Section 34.008; or

(3) a court authorizes the continuation of the agreement as provided by Section 34.008(b).

Added by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 9, eff. Sept. 1, 2017.

RESOURCES

Cindy V. Tisdale, *Texas Legislative Update—Family Law*, State Bar Col. Summer School (2017).

Sec. 34.008. TERMINATION OF AUTHORIZATION AGREEMENT

(a) Except as provided by Subsection (b), an authorization agreement under this chapter terminates if, after the execution of the authorization agreement, a court enters an order:

(1) affecting the parent-child relationship;

(2) concerning custody, possession, or placement of the child;

(3) concerning access to or visitation with the child; or

(4) regarding the appointment of a guardian for the child under Subchapter B, Chapter 1104, Estates Code.

(b) An authorization agreement may continue after a court order described by Subsection (a) is entered if the court entering the order gives written permission.

(c) An authorization agreement under this chapter terminates on written revocation by a party to the authorization agreement if the party:

(1) gives each party written notice of the revocation;

(2) files the written revocation with the clerk of the county in which:

(A) the child resides;

(B) the child resided at the time the authorization agreement was executed; or

(C) the adult caregiver resides; and

(3) files the written revocation with the clerk of each court:

(A) that has continuing, exclusive jurisdiction over the child;

(B) in which there is a court order or pending suit affecting the parent-child relationship concerning the child;

(C) in which there is pending litigation concerning:

(i) custody, possession, or placement of the child; or

(ii) access to or visitation with the child; or

(D) that has entered an order regarding the appointment of a guardian for the child under Subchapter B, Chapter 1104, Estates Code.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 13, eff. September 1, 2017.

(e) If both parents have signed the authorization agreement, either parent may revoke the authorization agreement without the other parent's consent.

(f) Execution of a subsequent authorization agreement does not by itself supersede, invalidate, or terminate a prior authorization agreement.

Added by Acts 2009, 81st Leg., R.S., Ch. 815 (S.B. 1598), Sec. 1, eff. June 19, 2009. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 897 (S.B. 482), Sec. 5, eff. September 1, 2011; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.017, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 10, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 13, eff. Sept. 1, 2017.

RESOURCES

Cindy V. Tisdale, *Texas Legislative Update—Family Law*, State Bar Col. Summer School (2017).

Sec. 34.009. PENALTY

(a) A person commits an offense if the person knowingly:

(1) presents a document that is not a valid authorization agreement as a valid authorization agreement under this chapter;

(2) makes a false statement on an authorization agreement; or

(3) obtains an authorization agreement by fraud, duress, or misrepresentation.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 815 (S.B. 1598), Sec. 1, eff. June 19, 2009.

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE A. LIMITATIONS OF MINORITY

CHAPTER 35. TEMPORARY AUTHORIZATION FOR CARE OF MINOR CHILD

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Sec. 35.006. RENEWAL OR TERMINATION OF TEMPORARY AUTHORIZATION 228

Sec. 35.007. EFFECT OF TEMPORARY AUTHORIZATION 228

RESOURCES

Warren Cole, *2017 Legislative Update: Family Law*, State Bar Col. Summer School (2017).

Sec. 35.001. APPLICABILITY

This chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001 or eligible to enter an authorization agreement under Section 34.001.

Added by Acts 2017, 85th Leg., R.S., Ch. 334 (H.B. 1043), Sec. 1, eff. June 1, 2017.

Sec. 35.002. TEMPORARY AUTHORIZATION

A person described by Section 35.001 may seek a court order for temporary authorization for care of a child by filing a petition in the district court in the county in which the person resides if:

(1) the child has resided with the person for at least the 30 days preceding the date the petition was filed; and

(2) the person does not have an authorization agreement under Chapter 34 or other signed, written documentation from a parent, conservator, or guardian that enables the person to provide necessary care for the child.

Added by Acts 2017, 85th Leg., R.S., Ch. 334 (H.B. 1043), Sec. 1, eff. June 1, 2017.

Sec. 35.003. PETITION FOR TEMPORARY AUTHORIZATION FOR CARE OF CHILD

(a) A petition for temporary authorization for care of a child must:

(1) be styled "ex parte" and be in the name of the child;

(2) be verified by the petitioner;

(3) state:

(A) the name, date of birth, and current physical address of the child;

(B) the name, date of birth, and current physical address of the petitioner; and

(C) the name and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;

(4) describe the status and location of any court proceeding in this or another state with respect to the child;

(5) describe the petitioner's relationship to the child;

(6) provide the dates during the preceding 12 months that the child has resided with the petitioner;

(7) describe any service or action that the petitioner is unable to obtain or undertake on behalf of the child without authorization from the court;

(8) state any reason that the petitioner is unable to obtain signed, written documentation from a parent, conservator, or guardian of the child;

(9) contain a statement of the period for which the petitioner is requesting temporary authorization; and

(10) contain a statement of any reason supporting the request for the temporary authorization.

(b) If the petition identifies a court proceeding with respect to the child under Subsection (a)(4), the petitioner shall submit a copy of any court order that designates a conservator or guardian of the child.

Added by Acts 2017, 85th Leg., R.S., Ch. 334 (H.B. 1043), Sec. 1, eff. June 1, 2017.

Sec. 35.004. NOTICE; HEARING

(a) On receipt of the petition, the court shall set a hearing.

(b) A copy of the petition and notice of the hearing shall be delivered to the parent, conservator, or guardian of the child by personal service or by certified mail, return receipt requested, at the last known address of the parent, conservator, or guardian.

(c) Proof of service under Subsection (b) must be filed with the court at least three days before the date of the hearing.

Added by Acts 2017, 85th Leg., R.S., Ch. 334 (H.B. 1043), Sec. 1, eff. June 1, 2017.

Sec. 35.005. ORDER FOR TEMPORARY AUTHORIZATION

(a) At the hearing on the petition, the court may hear evidence relating to the child's need for care by the petitioner, any other matter raised in the petition, and any objection or other testimony of the child's parent, conservator, or guardian.

(b) The court shall award temporary authorization for care of the child to the petitioner if the court finds it is necessary to the child's welfare and no objection is made by the child's parent, conservator, or guardian. If an objection is made, the court shall dismiss the petition without prejudice.

(c) The court shall grant the petition for temporary authorization only if the court finds by a preponderance of the evidence that the child does not have a parent, conservator, guardian, or other legal representative available to give the necessary consent.

(d) The order granting temporary authorization under this chapter expires on the first anniversary of the date of issuance or at an earlier date determined by the court. The order may authorize the petitioner to:

(1) consent to medical, dental, psychological, and surgical treatment and immunization of the child;

(2) execute any consent or authorization for the release of information as required by law relating to the treatment or immunization under Subdivision (1);

(3) obtain and maintain any public benefit for the child;

(4) enroll the child in a day-care program, preschool, or public or private primary or secondary school;

(5) authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities; and

(6) authorize or consent to any other care for the child essential to the child's welfare.

(e) An order granting temporary authorization under this chapter must state:

(1) the name and date of birth of the person with temporary authorization to care for the child;

(2) the specific areas of authorization granted to the person;

(3) that the order does not supersede any rights of a parent, conservator, or guardian as provided by court order; and

(4) the expiration date of the temporary authorization order.

(f) A copy of an order for temporary authorization must:

(1) be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child; and

(2) be sent to the last known address of the child's parent, conservator, or guardian.

Added by Acts 2017, 85th Leg., R.S., Ch. 334 (H.B. 1043), Sec. 1, eff. June 1, 2017.

Sec. 35.006. RENEWAL OR TERMINATION OF TEMPORARY AUTHORIZATION

(a) A temporary authorization order may be renewed by court order for a period of not more than one year on a showing by the petitioner of a continuing need for the order.

(b) At any time, the petitioner or the child's parent, conservator, or guardian may request the court to terminate the order. The court shall terminate the order on finding that there is no longer a need for the order.

Added by Acts 2017, 85th Leg., R.S., Ch. 334 (H.B. 1043), Sec. 1, eff. June 1, 2017.

Sec. 35.007. EFFECT OF TEMPORARY AUTHORIZATION

(a) A person who relies in good faith on a temporary authorization order under this chapter is not subject to:

(1) civil or criminal liability to any person; or

(2) professional disciplinary action.

(b) A temporary authorization order does not affect the rights of the child's parent, conservator, or guardian regarding the care, custody, and control of the child, and does not establish legal custody of the child.

(c) A temporary authorization order does not confer or affect standing or a right of intervention in any proceeding under Title 5.

(d) An order under this chapter is not a child custody determination and does not create a court of continuing, exclusive jurisdiction under Title 5.

Added by Acts 2017, 85th Leg., R.S., Ch. 334 (H.B. 1043), Sec. 1, eff. June 1, 2017.

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE A. LIMITATIONS OF MINORITY

CHAPTER 35A. TEMPORARY AUTHORIZATION FOR INPATIENT MENTAL HEALTH SERVICES FOR MINOR CHILD

Sec. 35A.001. APPLICABILITY **[new]** 230

Sec. 35A.002. TEMPORARY AUTHORIZATION **[new]** 230

Sec. 35A.003. PETITION FOR TEMPORARY AUTHORIZATION **[new]** 230

Sec. 35A.004. NOTICE; HEARING **[new]** 231

Sec. 35A.005. ORDER FOR TEMPORARY AUTHORIZATION **[new]** 231

Sec. 35A.001. APPLICABILITY

This chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001(a)(1), (2), or (3), and who has had actual care, custody, and control of the child for the six months preceding the filing of a petition under this chapter.

Added by Acts 2019, 86th Leg., S.B. 1238, Sec. 1, eff. Sept. 1, 2019.

Sec. 35A.002. TEMPORARY AUTHORIZATION

A person described by Section 35A.001 may seek a court order for temporary authorization to consent to voluntary inpatient mental health services for a child by filing a petition in the district court in the county in which the person resides.

Added by Acts 2019, 86th Leg., S.B. 1238, Sec. 1, eff. Sept. 1, 2019.

Sec. 35A.003. PETITION FOR TEMPORARY AUTHORIZATION

A petition for temporary authorization to consent to voluntary inpatient mental health services for a child must:

(1) be styled "ex parte" and be in the name of the child;

(2) be verified by the petitioner;

(3) state:

(A) the name, date of birth, and current physical address of the child;

(B) the name, date of birth, and current physical address of the petitioner; and

(C) the name and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;

(4) describe the status and location of any court proceeding in this or another state with respect to the child;

(5) describe the petitioner's relationship to the child;

(6) provide the dates during the preceding six months that the child has resided with the petitioner;

(7) contain a certificate of medical examination for mental illness prepared by a physician who has examined the child not earlier than the third day before the date the petition is filed and be accompanied by a sworn statement containing the physician's opinion, and the detailed reasons for that opinion, that the child is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized; and

(8) state any reason that the petitioner is unable to obtain signed, written documentation from a parent, conservator, or guardian of the child.

Added by Acts 2019, 86th Leg., S.B. 1238, Sec. 1, eff. Sept. 1, 2019.

Sec. 35A.004. NOTICE; HEARING

(a) On receipt of the petition, the court shall set a hearing.

(b) A copy of the petition and notice of the hearing shall be delivered to the parent, conservator, or guardian of the child by personal service or by certified mail, return receipt requested, at the last known address of the parent, conservator, or guardian.

Added by Acts 2019, 86th Leg., S.B. 1238, Sec. 1, eff. Sept. 1, 2019.

Sec. 35A.005. ORDER FOR TEMPORARY AUTHORIZATION

(a) At the hearing on the petition, the court may hear evidence relating to the child's need for inpatient mental health services by the petitioner, any other matter raised in the petition, and any objection or other testimony of the child's parent, conservator, or guardian.

(b) The court shall dismiss the petition for temporary authorization if an objection is made by the child's parent, conservator, or guardian.

(c) The court shall grant the petition for temporary authorization only if the court finds:

(1) by a preponderance of the evidence that the child does not have available a parent, conservator, guardian, or other legal representative to give consent under Section 572.001, Health and Safety Code, for voluntary inpatient mental health services; and

(2) by clear and convincing evidence that the child is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(d) Subject to Subsection (e), the order granting temporary authorization under this chapter expires on the earliest of:

(1) the date the petitioner requests that the child be discharged from the inpatient mental health facility;

(2) the date a physician determines that the criteria listed in Subsection (c)(2) no longer apply to the child; or

(3) subject to Subsection (e), the 10th day after the date the order for temporary authorization is issued under this section.

(e) The order granting temporary authorization continues in effect until the earlier occurrence of an event described by Subsection (d)(1) or (2) if the petitioner obtains an order for temporary managing conservatorship before the order expires as provided by Subsection (d)(3).

(f) A copy of an order granting temporary authorization must:

(1) be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child; and

(2) be sent to the last known address of the child's parent, conservator, or guardian.

Added by Acts 2019, 86th Leg., S.B. 1238, Sec. 1, eff. Sept. 1, 2019.

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE B. PARENTAL LIABILITY

CHAPTER 41. LIABILITY OF PARENTS FOR CONDUCT OF CHILD

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Sec. 41.002. LIMIT OF DAMAGES 234

Sec. 41.0025. LIABILITY FOR PROPERTY DAMAGE TO AN INN OR HOTEL 234

Sec. 41.003. VENUE 234

RESOURCES

Andrew C. Gratz, Increasing the Price of Parenthood: When Should Parents be Held Civilly Liable for the Torts of their Children?, 39 Hous. L. Rev. 169 (2002).

David F. Johnson, Paying for the Sins of Another—Parental Liability in Texas for the Torts of Children, 8 Tex. Wesleyan L. Rev. 359 (2002).

John F. Nichols, Sr. & Tristan H. Longino, Fiduciary Litigation: Duties and Obligations Between Parent, Child, and Third Parties, Fiduciary Litigation: Beyond the Basics (2011).

Sallee S. Smyth, *Keeping Up with the Kiddos: Case Law Update*, Marriage Dissolution (2010).

Sec. 41.001. LIABILITY

A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by:

(1) the negligent conduct of the child if the conduct is reasonably attributable to the negligent failure of the parent or other person to exercise that duty; or

(2) the wilful and malicious conduct of a child who is at least 10 years of age but under 18 years of age.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 2001, 77th Leg., ch. 587, Sec. 1, eff. Sept. 1, 2001.

COMMENTS

This section has gone through many revisions. Initially, it provided for parental liability for the willful and malicious conduct of a child between the ages of ten and eighteen. The legislature amended this section to provide for liability only when the child was between the ages of twelve and eighteen, but then amended it again to read that liability is imposed only when the child is between ten and eighteen years of age.

ANNOTATIONS

In re E.K., 241 S.W.3d 725, 727 (Tex. App.—Dallas 2007, no pet.). A trial court did not err in awarding restitution damages of $9,336.10 that occurred as a result of a defendant juvenile's vandalism of a property because the amount of restitution complied with this section and was supported by the evidence, despite the juvenile's claiming that he had been diagnosed with ADHD and bipolar disorder that would prevent him from obtaining full-time employment to make the restitution payments.

Isbell v. Ryan, 983 S.W.2d 335, 339 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (citations omitted). "As a general rule, defendants have no duty to prevent the criminal acts of a third party who does not act under defendants' supervision or control. This general rule does not apply in situations where a special relationship exists between the actor and the third person. One such exception to the rule is the parent-child relationship."

Williams v. Lavender, 797 S.W.2d 410, 414 (Tex. App.—Fort Worth 1990, writ denied). Exemplary damages were awarded based on the willful and malicious conduct of a fourteen-year-old who committed an assault.

Amarillo National Bank v. Terry, 658 S.W.2d 702 (Tex. App.—Amarillo 1983, no writ). A prior version of this section did not apply to losses when there was no property damage.

Buie v. Longspaugh, 598 S.W.2d 673, 676 (Tex. Civ. App.—Fort Worth 1980, writ ref'd n.r.e.). The purpose of this section is to protect owners of property from willful and malicious damage to their property by minors. Additionally, this section does not deny equal protection under the law or due process of law.

de Anda v. Blake, 562 S.W.2d 497, 499 (Tex. Civ. App.—San Antonio 1978, no writ). A parent can be held liable for the negligent acts of his or her child even in the absence of a joint enterprise.

Aetna Insurance Co. v. Richardelle, 528 S.W.2d 280, 285 (Tex. Civ. App.—Corpus Christi 1975, writ ref'd n.r.e.). At a time when this section had been amended to raise the age for liability from ten to twelve years (see Comments above), an insurer who did not file suit against an eleven-year-old until after the age limit changed had no "vested right" to recover.

Walker v. Lumbermens Mutual Casualty Co., 491 S.W.2d 696, 699 (Tex. Civ. App.—Eastland 1973, no writ). An insurance policy held by a parent of a minor child covered the damages caused by his eleven-year-old son.

Brown v. Dellinger, 355 S.W.2d 742, 747 (Tex. Civ. App.—Texarkana 1962, writ ref'd n.r.e.). When seven- and eight-year-old minors ignite a fire that consumes a residence, they may be held civilly liable for their own torts.

Sec. 41.002. LIMIT OF DAMAGES

Recovery for damage caused by wilful and malicious conduct is limited to actual damages, not to exceed $25,000 per occurrence, plus court costs and reasonable attorney's fees.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1997, 75th Leg., ch. 783, Sec. 1, eff. Sept. 1, 1997.

COMMENTS

This version of this section changed the maximum recovery amount from $5,000 to $25,000. The courts have stated that the statutory limitations to recovery uphold the purpose of the chapter.

ANNOTATIONS

In re D.M., 191 S.W.3d 381, 389 (Tex. App.—Austin 2006, pet. denied). The burden is on the parents of a delinquent child to prove that the child engaged in the delinquent behavior despite their good-faith efforts to guide the child.

Buie v. Longspaugh, 598 S.W.2d 673, 676 (Tex. Civ. App.—Fort Worth 1980, writ ref'd n.r.e.). Although this case applied a previous version of this section, which allowed a maximum recovery of $5,000, the court stated that the purpose of the section was upheld by the limitation because it would allow property owners maximum recovery for the damage to their property as well as encourage parents to properly train, control, and discipline their children.

Sec. 41.0025. LIABILITY FOR PROPERTY DAMAGE TO AN INN OR HOTEL

(a) Notwithstanding Section 41.002, recovery of damages by an inn or hotel for wilful and malicious conduct is limited to actual damages, not to exceed $25,000 per occurrence, plus court costs and reasonable attorney's fees.

(b) In this section "occurrence" means one incident on a single day in one hotel room. The term does not include incidents in separate rooms or incidents that occur on different days.

Added by Acts 1997, 75th Leg., ch. 40, Sec. 1, eff. Sept. 1, 1997.

Sec. 41.003. VENUE

A suit as provided by this chapter may be filed in the county in which the conduct of the child occurred or in the county in which the defendant resides.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE B. PARENTAL LIABILITY

CHAPTER 42. CIVIL LIABILITY FOR INTERFERENCE WITH POSSESSORY INTEREST IN CHILD

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Sec. 42.002. LIABILITY FOR INTERFERENCE WITH POSSESSORY RIGHT 236

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Sec. 42.005. VENUE 237

Sec. 42.006. DAMAGES 238

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Sec. 42.008. REMEDIES NOT AFFECTED 239

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Sec. 42.001. DEFINITIONS

In this chapter:

(1) "Order" means a temporary or final order of a court of this state or another state or nation.

(2) "Possessory right" means a court-ordered right of possession of or access to a child, including conservatorship, custody, and visitation.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 42.002. LIABILITY FOR INTERFERENCE WITH POSSESSORY RIGHT

(a) A person who takes or retains possession of a child or who conceals the whereabouts of a child in violation of a possessory right of another person may be liable for damages to that person.

(b) A possessory right is violated by the taking, retention, or concealment of a child at a time when another person is entitled to possession of or access to the child.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

The common-law cause of action for tortious interference with the familial relationship remained unchanged with the enactment of this chapter because it is a claim separate from interference with possessory rights to a minor child under this section. This chapter applies only to interference with possessory rights to a minor child. *Black v. Jackson*, 82 S.W.3d 44 (Tex. App.—Tyler 2002, no pet.). Additionally, both the managing conservator and the possessory conservator can be held liable for interference.

ANNOTATIONS

Weirich v. Weirich, 833 S.W.2d 942, 950 (Tex. 1992). A child's grandmother could not be held liable for violating a divorce decree that awarded the mother custody of the child because the mother's handwritten note to the grandmother was insufficient to give notice of the custodial provisions of the divorce decree. Although notice is not required for the purposes of aiding or assisting in violation of a court order (see section 42.003), notice is required for violation of a court order. Also, the court made clear that this chapter did not supersede the common-law cause of action for tortious interference with the familial relationship.

Hardy v. Mitchell, 195 S.W.3d 862, 865 (Tex. App.—Dallas 2006, pet. denied). A court order must be in place for this chapter to apply. Here, the father filed a cause of action for common-law fraud for tortious interference with the familial relationship that he alleged took place when there was no court order.

Garcia v. State, 172 S.W.3d 270, 273 (Tex. App.—El Paso 2005, no pet.). A custodial parent also may be liable for interference.

Black v. Jackson, 82 S.W.3d 44, 56 (Tex. App.—Tyler 2002, no pet.). The trial court properly dismissed the petitioner's claim for interference with possession of an adult child because the court lacked subject matter jurisdiction, but the claim should have been dismissed without prejudice.

In re J.G.W., 54 S.W.3d 826, 830 (Tex. App.—Texarkana 2001, no pet.). If a person harbors or entices away a minor child, the parent has a common-law cause of action against that person.

RESOURCES

Hayley B. Collins, *Are Your Pleadings and Discovery Ready for Trial?*, Adv. Trial Skills for Fam. Lawyers (2018).

John F. Nichols, Sr., John F. Nichols, Jr. & Charles Fox Miller, *Domestic Tort Cases Today: Theories and Practices*, Adv. Fam. L. (2017).

Sec. 42.003. AIDING OR ASSISTING INTERFERENCE WITH POSSESSORY RIGHT

(a) A person who aids or assists in conduct for which a cause of action is authorized by this chapter is jointly and severally liable for damages.

(b) A person who was not a party to the suit in which an order was rendered providing for a possessory right is not liable unless the person at the time of the violation:

(1) had actual notice of the existence and contents of the order; or

(2) had reasonable cause to believe that the child was the subject of an order and that the person's actions were likely to violate the order.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

Although there is no affirmative duty to report the whereabouts of a child, a party may not assist in the interference of a possessory interest of a child. An action under this section does not require notice of the court order.

ANNOTATIONS

Lozano v. Lozano, 52 S.W.3d 141, 144 (Tex. 2001) (per curiam). The cause of action for aiding and abetting in the interference of a possessory interest of a child stands even if the interference is ultimately unsuccessful.

Weirich v. Weirich, 833 S.W.2d 942, 946 (Tex. 1992). It is not required that a party had notice of the court order for an action of aiding and assisting.

Taylor v. Taylor, No. 10-03-00198-CV, 2005 WL 428434 (Tex. App.—Waco Feb. 23, 2005, pet. denied) (mem. op.). Employees of the Texas Department of Criminal Justice were not liable for aiding and assisting an incarcerated father's right to possession of and access to his children for their failure because they had no affirmative duty to provide him with his former wife's new address.

Eberle v. Adams, 73 S.W.3d 322, 340–41 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). While there is no affirmative duty to report information about the whereabouts of a child in a child abduction case, the maternal grandparents assisted in the interference of a possessory interest of a child when they actively participated in helping their daughter abduct the child.

A.H. Belo Corp. v. Corcoran, 52 S.W.3d 375, 382 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). A reporter had no duty to report a child's whereabouts after she interviewed the mother who abducted the child.

RESOURCES

John F. Nichols, Sr., John F. Nichols, Jr. & Charles Fox Miller, *Domestic Tort Cases Today: Theories and Practices*, Adv. Fam. L. (2017).

Sec. 42.005. VENUE

A suit may be filed in a county in which:

(1) the plaintiff resides;

(2) the defendant resides;

(3) a suit affecting the parent-child relationship as provided by Chapter 102 may be brought, concerning the child who is the subject of the court order; or

(4) a court has continuing, exclusive jurisdiction as provided by Chapter 155.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

The court where a divorce suit is filed retains dominant jurisdiction over a suit for interference with possessory interest to a child.

ANNOTATIONS

Rodriguez v. Rodriguez, No. 04-09-00101-CV, 2010 WL 816186 (Tex. App.—San Antonio Mar. 10, 2010, pet. denied) (mem. op.). The trial court in Maverick County erred in denying a plea in abatement when the divorce was pending in Denton County and that court had dominant jurisdiction over a suit under this chapter.

Sec. 42.006. DAMAGES

(a) Damages may include:

(1) the actual costs and expenses incurred, including attorney's fees, in:

(A) locating a child who is the subject of the order;

(B) recovering possession of the child if the petitioner is entitled to possession; and

(C) enforcing the order and prosecuting the suit; and

(2) mental suffering and anguish incurred by the plaintiff because of a violation of the order.

(b) A person liable for damages who acted with malice or with an intent to cause harm to the plaintiff may be liable for exemplary damages.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 7, eff. Sept. 1, 1995.

COMMENTS

"Damages," which includes future damages as part of "actual costs and expenses," must be proved with sufficient evidence.

ANNOTATIONS

Lozano v. Lozano, 52 S.W.3d 141, 144 (Tex. 2001) (per curiam). The former version of this statute, (subsection 36.02(c)), failed to define the word "damages," but the Texas Supreme Court held that the word referred to the specific damages as defined in former subsection 36.02(a). The court did not allow a mother to recover for future medical expenses because the psychologist's testimony was only speculative.

In re T.M.P., 417 S.W.3d 557 (Tex. App.—El Paso 2013, no pet.). The trial court was not required to segregate attorney's fees awarded to father as part of $50,000 damages award because the total fees incurred were far more than the sums awarded.

Smith v. Smith, 720 S.W.2d 586 (Tex. App.—Houston [1st Dist.] 1986, no writ). Future damages were allowed under the former version of this section, and the phrase "actual costs and expenses" included prospective costs.

RESOURCES

John F. Nichols, Sr., John F. Nichols, Jr. & Charles Fox Miller, *Domestic Tort Cases Today: Theories and Practices*, Adv. Fam. L. (2017).

Sec. 42.007. AFFIRMATIVE DEFENSE

The defendant may plead as an affirmative defense that the defendant acted in violation of the order with the express consent of the plaintiff.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1999, 76th Leg., ch. 437, Sec. 1, eff. Sept. 1, 1999.

ANNOTATIONS

Eberle v. Adams, 73 S.W.3d 322, 340 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). In a tortious interference with possession action brought by a father against the maternal grandparents and boyfriend of mother who conspired in mother's abduction of son, the court ruled that the motives of the maternal grandparents and the mother's boyfriend in aiding in the abduction were not a defense to the tort.

RESOURCES

John F. Nichols, Sr., John F. Nichols, Jr. & Charles Fox Miller, *Domestic Tort Cases Today: Theories and Practices*, Adv. Fam. L. (2017).

Sec. 42.008. REMEDIES NOT AFFECTED

This chapter does not affect any other civil or criminal remedy available to any person, including the child, for interference with a possessory right, nor does it affect the power of a parent to represent the interest of a child in a suit filed on behalf of the child.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

This chapter does not prevent a person from filing another lawsuit such as a common-law cause of action for tortious interference with the familial relationship or under the Penal Code.

ANNOTATIONS

Garcia v. State, 172 S.W.3d 270, 273 (Tex. App.—El Paso 2005, no pet.). "Custody" does not apply to the noncustodial parent. This chapter does not apply to interference when there was no court order granting a person possession.

Sec. 42.009. FRIVOLOUS SUIT

A person sued for damages as provided by this chapter is entitled to recover attorney's fees and court costs if:

(1) the claim for damages is dismissed or judgment is awarded to the defendant; and

(2) the court or jury finds that the claim for damages is frivolous, unreasonable, or without foundation.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Hardy v. Mitchell, 195 S.W.3d 862 (Tex. App.—Dallas 2006, pet. denied). The mother was not entitled to attorney's fees and court costs where the child was not the subject of any court order during the time the biological father alleged that the mother concealed the child's identity, and the biological father never had possession of the child so that mother was required to recover possession.

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE C. CHANGE OF NAME

CHAPTER 45. CHANGE OF NAME

SUBCHAPTER A. CHANGE OF NAME OF CHILD

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SUBCHAPTER B. CHANGE OF NAME OF ADULT

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SUBCHAPTER A. CHANGE OF NAME OF CHILD

Sec. 45.001. WHO MAY FILE; VENUE

A parent, managing conservator, or guardian of a child may file a petition requesting a change of name of the child in the county where the child resides.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

A court is not required to appoint a guardian ad litem or next friend when the child's interests are not in conflict with the person filing suit.

ANNOTATIONS

Newman v. King, 433 S.W.2d 420, 424 (Tex. 1968). In a case in which a guardian, rather than a guardian ad litem or next friend, represented the minor petitioner, the Texas Supreme Court held that failure of the trial court to appoint a guardian ad litem or next friend was not a fundamental error. The failure to appoint a guardian ad litem also did not deprive the trial court of jurisdiction to decide the matter once jurisdiction was obtained, and the order was in the best interest of the child.

In re A.E.M., 455 S.W.3d 684 (Tex. App.—Houston [1st Dist.] 2014, no pet.). The trial court had subject matter jurisdiction to order a name change of the child following a trial de novo on unresolved issues following an expedited administrative conference before the child support division of the attorney general's office.

In re M.C.F., 121 S.W.3d 891, 899 (Tex. App.—Fort Worth 2003, no pet.). Cases decided under Tex. Fam. Code ch. 45 may be used to prove the child's best interest in a name change action as part of a paternity suit pursuant to Tex. Fam. Code ch. 160.

In re Griffiths, 780 S.W.2d 899, 900 (Tex. App.—Amarillo 1989, no writ). The biological father of a child had a right to have the child's name include his surname because it was in the best interest of the child.

Scucchi v. Woodruff, 503 S.W.2d 356, 361 (Tex. Civ. App.—Fort Worth 1973, no writ). As long as there was no conflict of interest between the minor petitioners and their mother, who sought a name change on their behalves, the court did not have to appoint a guardian ad litem.

RESOURCES

Aimee Pingenot Key, Tena Toye Callahan, Alexandria H. Doyle & Jessica Janicek, *The New Normal—Modern Family Issues in a Changing Landscape*, Innovations—Breaking Boundaries in Custody Litigation (2017).

Sec. 45.002. REQUIREMENTS OF PETITION

(a) A petition to change the name of a child must be verified and include:

(1) the present name and place of residence of the child;

(2) the reason a change of name is requested;

(3) the full name requested for the child;

(4) whether the child is subject to the continuing exclusive jurisdiction of a court under Chapter 155; and

(5) whether the child is subject to the registration requirements of Chapter 62, Code of Criminal Procedure.

(b) If the child is 10 years of age or older, the child's written consent to the change of name must be attached to the petition.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1999, 76th Leg., ch. 1390, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1300, Sec. 5, eff. Sept. 1, 2003.

ANNOTATIONS

In re C.M.V., 479 S.W.3d 352 (Tex. App.—El Paso 2015, no pet.). The trial court did not become the court of continuing, exclusive jurisdiction because it never entered a final order and dismissed the divorce action less than two weeks after the child's name change.

In re R.E.G., No. 13–08–00335–CV, 2009 WL 3778014 (Tex. App.—Corpus Christi Nov. 12, 2009, pet. denied) (mem. op.). A trial court did not abuse its discretion when it ordered a minor child's surname to include both parents' surnames, even though the father requested only his surname in his petition.

In re A.J.P., No. 05–07–01772–CV, 2009 WL 369478 (Tex. App.—Dallas Feb. 17, 2009, no pet.) (mem. op.). The verification requirement also applies to name changes under Tex. Fam. Code ch. 160, provided that there are no conflicts of interest.

In re C.C.N.S., 955 S.W.2d 448, 449 (Tex. App.—Fort Worth 1997, no pet.). A mother waived her argument that the father's pleading was insufficient under this section because the mother failed to object, and she testified in the case.

In re J.K., 922 S.W.2d 220, 223 (Tex. App.—San Antonio 1996, no writ). A trial court erred changing the child's name when the father's pleadings did not comply with section 32.02, the former version of this section.

Ex parte Taylor, 322 S.W.2d 309, 313 (Tex. Civ. App.—El Paso 1959, no writ). In a suit to change children's surname to that of their stepparent, who was awarded custody, the court held that the complaint correctly stated a cause of action.

RESOURCES

Sallee S. Smyth, *Case Law Update—SAPCR*, Marriage Dissolution (2019).

Sec. 45.003. CITATION

(a) The following persons are entitled to citation in a suit under this subchapter:

(1) a parent of the child whose parental rights have not been terminated;

(2) any managing conservator of the child; and

(3) any guardian of the child.

(b) Citation must be issued and served in the same manner as under Chapter 102.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Eschrich v. Williamson, 475 S.W.2d 380, 383 (Tex. Civ. App.—Beaumont 1972, writ ref'd n.r.e.). When a mother is trying to change the surname of her child to that of her second husband, the biological father is entitled to notice of the petition under the due process clause of the U.S. Constitution and the due course of law clause of the Texas Constitution.

Sec. 45.0031. WAIVER OF CITATION

(a) A party to a suit under this subchapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

Added by Acts 2015, 84th Leg., R.S., Ch. 198 (S.B. 814), Sec. 3, eff. September 1, 2015.

RESOURCES

Warren Cole, *2015 Legislative Update: Family Law*, Adv. Fam. L. (2015).

Sec. 45.004. ORDER

(a) The court may order the name of a child changed if:

(1) the change is in the best interest of the child; and

(2) for a child subject to the registration requirements of Chapter 62, Code of Criminal Procedure:

(A) the change is in the interest of the public; and

(B) the person petitioning on behalf of the child provides the court with proof that the child has notified the appropriate local law enforcement authority of the proposed name change.

(b) If the child is subject to the continuing jurisdiction of a court under Chapter 155, the court shall send a copy of the order to the central record file as provided in Chapter 108.

(c) In this section, "local law enforcement authority" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 2003, 78th Leg., ch. 1300, Sec. 6, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 1008 (H.B. 867), Sec. 2.05, eff. September 1, 2005.

COMMENTS

A court determining the best interest of the child may consider: (1) the relationship of the parent requesting the name change with the child; (2) the child's preference; (3) the child's age; (4) the potential embarrassment to the child; and (5) other facts. While the court may consider these factors, the court has the ultimate discretion when deciding whether a name change is in the best interest of the child.

ANNOTATIONS

Newman v. King, 433 S.W.2d 420, 424 (Tex. 1968). In a proceeding involving the changing of a child's name, the court will look at what is in the child's best interest.

In re L.T.M., No. 11-15-00312-CV, 2016 WL 7650549 (Tex. App.—Eastland Dec. 30, 2016, no pet.) (mem. op.). Fourteen-year-old child's name was properly changed to his father's surname even though he had gone by his mother's surname most of his life because the child testified about various allegations his mother made about his father of sexual abuse and other reasons he wanted his name to be changed.

In re S.M.-R., No. 02-15-00287-CV, 2016 WL 6900902 (Tex. App.—Fort Worth Nov. 23, 2016, no pet.) (mem. op.). Testimony from the father on how the name change would benefit the child was sufficient despite the fact that the father initially testified to personal reasons he wanted the child's name to be changed.

Anderson v. Dainard, 478 S.W.3d 147 (Tex. App.—Houston [1st Dist.] 2015, no pet.). The trial court did not abuse its discretion in determining that it was in child's best interest to change her surname to her father's, who was meeting his obligations to the child and had expressed a desire to form a father-daughter bond that the trial court found sincere.

In re D.A., 307 S.W.3d 556, 564 (Tex. App.—Dallas 2010, no pet.). The court of appeals upheld the trial court's denial of a petition filed by a father to have his child's surname changed to his own where the child had the same surname as his other siblings.

In re S.C.S., No. 05-09-00832-CV, 2010 WL 3091373 (Tex. App.—Dallas Aug. 6, 2010, pet. denied) (mem. op.). Trial court did not err in changing a minor child's name to the father's surname when it determined that the name change would benefit the child. The decision was also supported by the fact that the father had exercised his awarded visitation regularly.

In re R.E.G., No. 13-08-00335-CV, 2009 WL 3378014 (Tex. App.—Corpus Christi Nov. 12, 2009, pet. denied) (mem. op.). Evidence presented at a hearing supported the trial court's decision to change the child's name to a hyphenated surname combining both his mother's and father's surnames because both families were actively involved in the child's life. Therefore, a hyphenated name was in the child's best interest.

In re A.E.M.S., No. 09-07-410-CV, 2009 WL 4509054 (Tex. App.—Beaumont Oct. 9, 2009, no pet.) (mem. op.). A trial court did not abuse its discretion when it denied a father's petition to have his three-year-old child's name changed, instead allowing the child to continue to have the mother's surname, because the child had had the mother's surname since birth, and a continuation of that name would not embarrass or otherwise negatively affect the child.

Scoggins v. Trevino, 200 S.W.3d 832, 842 (Tex. App.—Corpus Christi 2006, no pet.). The trial court's decision to change the child's name was supported by evidence that the name change was in the child's best interest.

In re Guthrie, 45 S.W.3d 719, 729 (Tex. App.—Dallas 2001, pet. denied). The best interest standard is the guiding standard, instead of customs or traditions or the parents' preferences, in an action to change a child's name.

G.K. v. K.A., 936 S.W.2d 70, 74 (Tex. App.—Austin 1996, writ denied). A trial court has discretion in determining whether to change a child's name. The trial court properly denied the name change to the father's surname because the child was born out of wedlock while the father was married to another person, and the father remained married to that person.

Concha v. Concha, 808 S.W.2d 230, 232 (Tex. App.—El Paso 1991, no writ). In a divorce proceeding, the father did not have a constitutional right to have his child's name changed to his when the child had been living by his mother's surname.

Brown v. Carroll, 683 S.W.2d 61, 63 (Tex. App.—Tyler 1984, no writ). The mother of a child must legally change the child's name instead of merely referring to the child using the child's stepfather's name.

In re M.L.P., 621 S.W.2d 430, 431 (Tex. App.—San Antonio 1981, writ dism'd w.o.j.). When a child is originally named after one of the parents, the other parent must give the trial court a good reason as to why the child's name should be changed.

In re Baird, 610 S.W.2d 252, 254 (Tex. Civ. App.—Fort Worth 1980, no writ). A trial court that signed a divorce decree had jurisdiction over matters regarding the children of the marriage and could prohibit the mother of the child and her husband from referring to the child by any other name than that of the biological father.

Bennett v. Northcutt, 544 S.W.2d 703, 709 (Tex. Civ. App.—Dallas 1976, no writ) (per curiam). A trial court will change a child's name only if the child's welfare requires it, and in evaluating the best interest of the child, the court may consider the child's preference in light of the child's age.

Plass v. Leithold, 381 S.W.2d 580, 582 (Tex. Civ. App.—Dallas 1964, no writ). The adoptive mother of a child petitioned to change the name of the child to her new husband's name, but the court explained that the mother had to prove that the name change from the child's adoptive father's surname to the stepfather's surname was in the best interest of the child. The trial court considered the adoptive father's continued relationship with the child among other evidence in its decision to deny the mother's petition.

Ex parte Taylor, 322 S.W.2d 309, 313 (Tex. Civ. App.—El Paso 1959, no writ). The father's interests were secondary to the child's interest when evaluating whether to change the child's name.

Pintor v. Martinez, 202 S.W.2d 333, 335 (Tex. Civ. App.—Austin 1947, writ ref'd n.r.e.). In a termination case in which the trial court awarded custody of a child to a family member, the court also permitted the child's surname to be changed to that of the family member.

Sec. 45.005. LIABILITIES AND RIGHTS UNAFFECTED

A change of name does not:

(1) release a child from any liability incurred in the child's previous name; or

(2) defeat any right the child had in the child's previous name.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

SUBCHAPTER B. CHANGE OF NAME OF ADULT

Sec. 45.101. WHO MAY FILE; VENUE

An adult may file a petition requesting a change of name in the county of the adult's place of residence.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 45.102. REQUIREMENTS OF PETITION

(a) A petition to change the name of an adult must be verified and include:

(1) the present name and place of residence of the petitioner;

(2) the full name requested for the petitioner;

(3) the reason the change in name is requested;

(4) whether the petitioner has been the subject of a final felony conviction;

(5) whether the petitioner is subject to the registration requirements of Chapter 62, Code of Criminal Procedure; and

(6) a legible and complete set of the petitioner's fingerprints on a fingerprint card format acceptable to the Department of Public Safety and the Federal Bureau of Investigation.

(b) The petition must include each of the following or a reasonable explanation why the required information is not included:

(1) the petitioner's:

(A) full name;

(B) sex;

(C) race;

(D) date of birth;

(E) driver's license number for any driver's license issued in the 10 years preceding the date of the petition;

(F) social security number; and

(G) assigned FBI number, state identification number, if known, or any other reference number in a criminal history record system that identifies the petitioner;

(2) any offense above the grade of Class C misdemeanor for which the petitioner has been charged; and

(3) the case number and the court if a warrant was issued or a charging instrument was filed or presented for an offense listed in Subsection (b)(2).

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 2003, 78th Leg., ch. 1003, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1300, Sec. 7, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 6.001, eff. September 1, 2005.

COMMENTS

A petition for a name change must meet the requirements of this section. Failure to comply with this section is grounds for a denial of the petition.

ANNOTATIONS

In re Rocher, No. 14-15-00462-CV, 2016 WL 4131626 (Tex. App.—Houston [14th Dist.] Aug. 2, 2016, no pet.) (mem. op.). A trial court properly granted a name change under this statute but denied a gender change for an individual.

In re Jones, 507 S.W.3d 405, 407 (Tex. App.—Houston [1st Dist.] 2016, no pet.). An order denying petitioner's name change was upheld since he failed to disclose his reckless driving conviction in his verified petition and instead mentioned it in the unverified proposed order.

In re Barnes, No. 07–08–0191–CV, 2009 WL 1107913 (Tex. App.—Amarillo Apr. 24, 2009, no pet.) (mem. op.). The court of appeals upheld the denial of a name-change petition filed by an inmate because the petition failed to disclose the inmate's felony conviction.

Chavez v. Chavez, 269 S.W.3d 763, 769 (Tex. App.—Dallas 2008, no pet.). A trial court properly denied a petitioner's request for a name change in a divorce because she failed to provide any evidence in support of the name change, did not request a name change at trial, and did not conform with the statutory requirements.

In re Mayol, 137 S.W.3d 103, 106 (Tex. App.—Houston [1st Dist.] 2004, no pet.). A trial court properly denied a request for name change when petitioner failed to provide evidence that the requested name was his previous name.

Sec. 45.103. ORDER

(a) The court shall order a change of name under this subchapter for a person other than a person with a final felony conviction or a person subject to the registration requirements of Chapter 62, Code of Criminal Procedure, if the change is in the interest or to the benefit of the petitioner and in the interest of the public.

(b) A court may order a change of name under this subchapter for a person with a final felony conviction if:

(1) ~~,~~ in addition to the requirements of Subsection (a), the person has:

(A) ~~(1)~~ received a certificate of discharge by the Texas Department of Criminal Justice or completed a period of community supervision or juvenile probation ordered by a court and not less than two years have passed from the date of the receipt of discharge or completion of community supervision or juvenile probation; or

(B) ~~(2)~~ been pardoned; **or**

(2) the person is requesting to change the person's name to the primary name used in the person's criminal history record information.

(c) A court may order a change of name under this subchapter for a person subject to the registration requirements of Chapter 62, Code of Criminal Procedure, if **the person:**

(1) **meets** ~~, in addition to~~ the requirements of Subsection (a) **or is requesting to change the person's name to the primary name used in the person's criminal history record information; and**

(2) ~~, the person~~ provides the court with proof that the person has notified the appropriate local law enforcement authority of the proposed name change.

(d) In this **section:**

(1) **"Criminal history record information" has the meaning assigned by Section 411.082, Government Code.**

(2) **"Local** ~~subsection, "local~~ law enforcement authority" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 2003, 78th Leg., ch. 1300, Sec. 8, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 1008 (H.B. 867), Sec. 2.06, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.057, eff. September 1, 2009. Acts 2019, 86th Leg., H.B. 2623, Sec. 1, eff. Sept. 1, 2019.

Section 2 of Acts 2019, 86th Leg., H.B. 2623 states—

"Section 45.103, Family Code, as amended by this Act, applies only to a petition for a change of name that is filed on or after the effective date of this Act. A petition filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose."

COMMENTS

A court has discretion when considering the evidence in support of a name change. The state has a legitimate interest in denying name changes to convicted felons to protect the public interest.

ANNOTATIONS

Matthews v. Morales, 23 F.3d 118, 119–20 (5th Cir. 1994). The state has a legitimate reason for disallowing convicted felons from changing their names. Denial of an inmate's name-change petition did not violate the inmate's free exercise of religion.

In re Barnes, No. 07–08–0191–CV, 2009 WL 1107913 (Tex. App.—Amarillo Apr. 24, 2009, no pet.) (mem. op.). The court of appeals affirmed the denial of a petition for name change filed by an inmate convicted of a felony.

In re Mayol, 137 S.W.3d 103, 106 (Tex. App.—Houston [1st Dist.] 2004, no pet.). A trial court did not err in denying a name change when the petitioner failed to establish evidence verifying that the name sought was his former name.

In re Dickey, 919 S.W.2d 790, 791 (Tex. App.—Texarkana 1996, no writ). The state has a legitimate interest in denying convicted felons a name change, and it does not matter that the inmate was not convicted in Texas.

In re Erickson, 547 S.W.2d 357, 360 (Tex. Civ. App.—Houston [14th Dist.] 1977, no writ). The court of appeals reversed a trial court's denial of a name change, stating that the petitioner had sufficient reason to change her married name back to her maiden name, and failure to order the name change would result in a denial of equal protection because the denial would be based on an invalid gender classification.

In re Evett's Appeal, 392 S.W.2d 781, 785 (Tex. Civ. App.—San Antonio 1965, writ ref'd). There was no abuse of discretion when a trial court denied a woman's request to change her name back to her former husband's name for the purpose of a wrongful death suit involving her former husband.

Sec. 45.104. LIABILITIES AND RIGHTS UNAFFECTED

A change of name under this subchapter does not release a person from liability incurred in that person's previous name or defeat any right the person had in the person's previous name.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 45.105. CHANGE OF NAME IN DIVORCE SUIT

(a) On the final disposition of a suit for divorce, for annulment, or to declare a marriage void, the court shall enter a decree changing the name of a party specially praying for the change to a prior used name unless the court states in the decree a reason for denying the change of name. The court may not deny a change of name solely to keep last names of family members the same.

(b) A person whose name is changed under this section may apply for a change of name certificate from the clerk of the court as provided by Section 45.106.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 7.10(a), eff. Sept. 1, 1997.

Sec. 45.106. CHANGE OF NAME CERTIFICATE

(a) A person whose name is changed under Section 6.706 or 45.105 may apply to the clerk of the court ordering the name change for a change of name certificate.

(b) A certificate under this section is a one-page document that includes:

(1) the name of the person before the change of name was ordered;

(2) the name to which the person's name was changed by the court;

(3) the date on which the name change was made;

(4) the person's social security number and driver's license number, if any;

(5) the name of the court in which the name change was ordered; and

(6) the signature of the clerk of the court that issued the certificate.

(c) An applicant for a certificate under this section shall pay a $10 fee to the clerk of the court for issuance of the certificate.

(d) A certificate under this section constitutes proof of the change of name of the person named in the certificate.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 7.10(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.06, eff. Sept. 1, 1999.

Sec. 45.107. WAIVER OF CITATION

(a) A party to a suit under this subchapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) **The** ~~Notwithstanding Section 132.001, Civil Practice and Remedies Code, the~~ waiver must be sworn before a notary public who is not an attorney in the suit **or conform to the requirements for an unsworn declaration under Section 132.001, Civil Practice and Remedies Code**. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

Added by Acts 2015, 84th Leg., R.S., Ch. 198 (S.B. 814), Sec. 4, eff. September 1, 2015. Amended by Acts 2019, 86th Leg., S.B. 891, Sec. 11.02, eff. Sept. 1, 2019.

Section 15.05 of Acts 2019, 86th Leg., S.B. 891 states—

"The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, implement a provision of this Act using other appropriations available for that purpose."

RESOURCES

Warren Cole, *2015 Legislative Update: Family Law*, Adv. Fam. L. (2015).

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE E. GENERAL PROVISIONS

CHAPTER 47. GENERAL PROVISIONS

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Sec. 47.001. APPLICABILITY OF DEFINITIONS

(a) Except as provided by Subsection (b), the definitions in Chapter 101 apply to terms used in this title.

(b) If a term defined in this title has a meaning different from the meaning provided by Chapter 101, the meaning provided by this title prevails.

Added by Acts 2015, 84th Leg., R.S., Ch. 612 (S.B. 822), Sec. 1, eff. September 1, 2015.

RESOURCES

Warren Cole, *2015 Legislative Update: Family Law*, Adv. Fam. L. (2015).

Sec. 47.002. APPLICABILITY OF LAWS RELATING TO ATTORNEYS AD LITEM, GUARDIANS AD LITEM, AND AMICUS ATTORNEYS

Chapter 107 applies to the appointment of an attorney ad litem, guardian ad litem, or amicus attorney under this title.

Added by Acts 2015, 84th Leg., R.S., Ch. 612 (S.B. 822), Sec. 1, eff. September 1, 2015.

RESOURCES

Warren Cole, *2015 Legislative Update: Family Law*, Adv. Fam. L. (2015).

Sec. 47.003. USE OF DIGITIZED SIGNATURE

(a) A digitized signature on an original petition or application under this title or any other pleading or order in a proceeding under this title satisfies the requirements for and imposes the duties of signatories to pleadings, motions, and other papers identified under Rule 13, Texas Rules of Civil Procedure.

(b) A digitized signature under this section may be applied only by, and must remain under the sole control of, the person whose signature is represented.

Added by Acts 2015, 84th Leg., R.S., Ch. 1165 (S.B. 813), Sec. 2, eff. September 1, 2015. Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 7.001, eff. September 1, 2017.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

COMMENTS

Title 4 consists of three subtitles: Subtitle A, General Provisions, contains definitions. Subtitle B, Protective Orders, spells out substance and procedure with respect to protective orders. Subtitle C, Reporting Family Violence, sets forth reporting and immunity provisions.

Certain criminal offenses either are defined to include family violence or are enhanced by that finding. Consequently, many criminal cases are relevant to issues in civil cases such as whether there was a threat, whether a threat was imminent, and whether the parties were members of the same household.

Courts should broadly construe the provisions of this title to effectuate its humanitarian and preventive purposes. *See Boyd v. Palmore*, 425 S.W.3d 425 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

Whether family violence is likely to occur in the future often relies upon the "past is prologue" principle—that the occurrence of family violence in the past evidences the continued likelihood that family violence will occur. This principle originated in termination cases, where evidence that a parent has engaged in abusive or neglectful conduct in the past permits an inference that the parent will continue this behavior in the future. The courts have extended this principle to applications for protective orders. *See Bruhl v. Roberts*, No. 09–08–00057–CV, 2009 WL 2461295 (Tex. App.—Beaumont Aug. 13, 2009, no pet.) (mem. op.) (summarizing cases).

RESOURCES

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SUBTITLE A. GENERAL PROVISIONS

CHAPTER 71. DEFINITIONS

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Sec. 71.007. PROSECUTING ATTORNEY 259

Sec. 71.001. APPLICABILITY OF DEFINITIONS

(a) Definitions in this chapter apply to this title.

(b) If, in another part of this title, a term defined by this chapter has a meaning different from the meaning provided by this chapter, the meaning of that other provision prevails.

(c) Except as provided by this chapter, the definitions in Chapter 101 apply to terms used in this title.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 71.002. COURT

"Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, statutory county court, constitutional county court, or other court expressly given jurisdiction under this title.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1220, Sec. 1, eff. Sept. 1, 1997.

ANNOTATIONS

Roper v. Jolliffe, 493 S.W.3d 624 (Tex. App.—Dallas 2015, pet. denied). By the statute's plain language, Tex. Fam. Code tit. 4 vests trial courts, not juries, with the power to make findings necessary for the issuance of protective orders. Even with a timely requested jury, the statute does not provide a right to a jury trial. From a constitutional perspective, protective orders are not analogous to actions tried before juries by statute or common law. Thus, there is no right to a jury trial under the plain meaning of title 4 or the constitution.

Williams v. Williams, 19 S.W.3d 544 (Tex. App.—Fort Worth 2000, pet. denied). The legislature defined "court" as a district court, court of domestic relations, juvenile court having the jurisdiction of a district court, statutory county court, constitutional county court, or other court expressly given jurisdiction under Tex. Fam. Code tit. 4. Neither the word "jury" nor the phrase "trier of fact" appears in title 4. The statutory definition of "court" and the legislature's omission of "jury" and "trier of fact" make clear that the legislature intended that judges, not juries, have the responsibility of making the findings necessary for the issuance of a family violence protective order.

Sec. 71.0021. DATING VIOLENCE

(a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor that:

(1) is committed against a victim or applicant for a protective order:

(A) with whom the actor has or has had a dating relationship; or

(B) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

(1) the length of the relationship;

(2) the nature of the relationship; and

(3) the frequency and type of interaction between the persons involved in the relationship.

(c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 91, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 872 (S.B. 116), Sec. 2, eff. June 17, 2011. Acts 2015, 84th Leg., R.S., Ch. 117 (S.B. 817), Sec. 1, eff. September 1, 2015.

COMMENTS

Although the wording varies slightly, this section and section 71.004, Family Violence, define "violence" in substantively identical terms. Courts citing to section 81.001, Entitlement to Protective Order, or to section 85.001, Required Findings and Orders, also sometimes consider what constitutes "family violence." Accordingly, annotations to this section should be reviewed in conjunction with annotations to sections 71.004, 81.001, and 85.001 when researching what "violence" consists of.

The 2011 amendment added subsection 71.0021(a)(1)(B), which expanded the definition of victims of dating violence to include those who are married to or are dating persons the perpetrator is or was married to or dating.

ANNOTATIONS

Herrera v. State, 526 S.W.3d 800 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd). A three-week relationship can constitute the statutory definition of a "dating relationship" when a rational trier of fact could have concluded, based on the evidence, that the parties were in a dating relationship. In this case, teenagers who had dated for three weeks, had sexual intercourse, and had "talked about their future" were determined to have met the statutory definition of a "dating relationship."

Hill v. State, No. 01-10-00926-CR, 2012 WL 983338 (Tex. App.—Houston [1st Dist.] Mar. 22, 2012, no pet.) (mem. op.). This section does not require that the dating relationship exist at the time of an assault. It requires only that the parties "have had" a dating relationship at some time in the past.

Ochoa v. State, 355 S.W.3d 48 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd). A dating relationship can include a same-sex couple. Tex. Penal Code § 21.06, which criminalizes "deviate sexual intercourse with another individual of the same sex," does not conflict with this conclusion because dating relationships do not necessarily include sexual intercourse. Moreover, the Texas legislature reasonably could have determined that persons in same-sex relationships, whether or not legal, needed special protection from abuse.

Febonio v. State, No. 03-08-00518-CV, 2009 WL 2913920 (Tex. App.—Austin Aug. 25, 2009, no pet.) (mem. op.). By the plain terms of this section, committing dating violence does not require the perpetrator to inflict physical harm or bodily injury. Only an intent to inflict physical harm, bodily injury, or assault is required.

Childress v. State, 285 S.W.3d 544 (Tex. App.—Waco 2009, pet. ref'd). The definition of "dating relationship" is not unconstitutionally vague: it is defined by commonly used terms and is not complicated. The definition takes a commonsense approach to describing a dating relationship and distinguishes a dating relationship from casual acquaintances and ordinary fraternizations.

Bedinghaus v. Adams, No. 2-08-096-CV, 2009 WL 279388 (Tex. App.—Fort Worth Feb. 5, 2009, no pet.) (mem. op.). Because of the disjunctive "or" between the "sexual assault" and "that is a threat" in the definition of dating violence, "dating violence" includes a threat without an actual act of violence. Further, the definition implies that whether there was a "threat" depends upon whether the person who was the subject of the threat reasonably believed that he or she was being threatened.

Sec. 71.003. FAMILY

"Family" includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals

who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 821, Sec. 2.03, eff. June 14, 2001.

COMMENTS

Consanguinity is defined in Tex. Gov't Code § 573.022. Affinity is defined in Tex. Gov't Code § 573.024.

ANNOTATIONS

Watkins v. State, No. 09-10-00073-CR, 2011 WL 3925583 (Tex. App.—Texarkana Aug. 24, 2011, pet. ref'd) (mem. op.). Common-law spouses are related by affinity.

Hudson v. State, 179 S.W.3d 731 (Tex. App.—Houston [14th Dist.] 2005, no pet.). A statement to police by an assault victim, while intoxicated, that a man was her common-law husband, coupled with the emergency room physician's testimony that he "believed" the woman referred to the man as her "boyfriend," were factually and legally sufficient to establish that the man was the woman's "family member." The trial court erred by failing to instruct the jury on the definitions of consanguinity and affinity, but that failure did not constitute an egregious error warranting reversal.

Carter v. State, 150 S.W.3d 230 (Tex. App.—Texarkana 2004, no pet.). "Family" includes individuals who are parents of the same child, without regard to marriage. The child need not be a minor.

Sec. 71.004. FAMILY VIOLENCE

"Family violence" means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), (G), (H), (I), (J), (K), and (M), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 91, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 117 (S.B. 817), Sec. 2, eff. September 1, 2015; Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 1, eff. Sept. 1, 2017.

COMMENTS

Although the wording differs slightly, this section and section 71.0021, Dating Violence, define "violence" in substantively identical terms. Courts citing to section 81.001, Entitlement to Protective Order, or section 85.001, Required Findings and Orders, also sometimes consider what constitutes "family violence." Accordingly, annotations to this section should be reviewed in conjunction with annotations to sections 71.0021, 81.001, and 85.001 when researching what "violence" consists of.

ANNOTATIONS

Martin v. Martin, 545 S.W.3d 162 (Tex. App.—El Paso 2017, no pet.). Although evidence was presented regarding self-defense, ex-husband pushed ex-wife's face against a wall causing bruising around her eye, slapped her across the face, and shoved her on three separate meetings, thus justifying the trial court's finding of a likelihood of family violence in the future.

Burt v. Francis, 528 S.W.3d 549 (Tex. App.—Eastland 2016, no pet.). The factfinder may conclude that an individual was reasonably placed in fear so as to support a finding of family violence, even in circumstances where no express threats were conveyed. Acts of the father, including threatening the child that he would never see him again, scream-

ing and yelling at the mother and child while standing over them, slamming his fist, using foul language, and calling the mother an evil person, reasonably placed mother and child in fear and thus constituted family violence.

Agbogwe v. State, 414 S.W.3d 820, 839 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (citations omitted). On appeal, the state contended that the family violence finding was proper based on the doctrine of transferred intent, arguing that while appellant was directing an assault on his household member (his girlfriend), he attacked another woman when she intervened. His intent had been to commit family violence against his girlfriend, and in the process, he also assaulted the other woman because she attempted to protect the girlfriend. The court of appeals noted that the doctrine of transferred intent, as codified in Tex. Penal Code § 6.04, allows "a transfer of intent in circumstances where the difference between what was intended, contemplated, and risked and what occurred is either a different victim, or where there is a discrepancy between the degree of harm intended and that actually produced." The situation in this case is not a situation in which there is a difference between appellant's intended victim and his actual victim. He intended to assault his girlfriend, a member of his household, and he so assaulted her by hitting her, knocking her down, and kicking her. When the other woman attempted to intervene and protect the girlfriend, he intended to assault the other woman to prevent her interference, and he so assaulted her by hitting her with his fist. The transferred intent doctrine is thus inapplicable under these circumstances.

Boyd v. Palmore, 425 S.W.3d 425 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Given the remedial nature of Tex. Fam. Code tit. 4, courts should broadly construe its provisions to effectuate its humanitarian and preventive purposes. Blocking a car, then jumping on the car's hood, followed by harassment via text messages are sufficient evidence of family violence because those acts threaten violence.

Davis v. Sampson, No. 01-10-00604-CV, 2011 WL 6306639 (Tex. App.—Houston [1st Dist.] Dec. 15, 2011, no pet.) (mem. op.). "Imminent" refers to a present threat, not a threat of future bodily injury or death. "Imminent" means "near at hand; mediate rather than immediate; close rather than touching; impending; on the point of happening; threatening; menacing; perilous." Threatening telephone calls and text messages from a man in Atlanta to a woman in Houston placed the woman in imminent fear because the communications included that the man had left Atlanta and was on his way to Houston.

Lakner v. Van Houten, No. 01-09-00422-CV, 2011 WL 1233381 (Tex. App.—Houston [1st Dist.] Mar. 31, 2011, no pet.) (mem. op.). Family violence does not require actual physical harm; threats that reasonably place the victim in fear of imminent harm are sufficient. Further, no overt express threat of violence is required to place a reasonable person in fear. The fact finder may conclude that an individual perceived fear or was placed in fear in circumstances where no actual threats were conveyed. Fear may result from a menacing glance and hand gesture, even in the absence of verbal threats. The course of conduct between the perpetrator and the victim is important to understanding whether there is sufficient evidence of a threat for a protective order to issue.

Blevins v. State, No. 02-09-00237-CR, 2010 WL 5395836 (Tex. App.—Fort Worth Dec. 30, 2010, pet. ref'd) (mem. op.). A victim need not feel pain for family violence to occur because the definition of family violence includes assault, which Tex. Penal Code § 22.01(a)(3) defines as "intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative."

In re Wean, No. 03-10-00383-CV, 2010 WL 3431708 (Tex. App.—Austin Aug. 31, 2010, orig. proceeding) (mem. op.). A mother's "suspicions or conjectures" of sexual abuse are insufficient to prove family violence. Also, spanking a child, in and of itself, does not constitute family violence.

Clements v. Haskovec, 251 S.W.3d 79 (Tex. App.—Corpus Christi 2008, no pet.). A husband's verbal threats to his wife and daughter and raising his fist at his daughter constituted family violence, even without striking them, because these acts placed the wife and daughter in fear of imminent physical harm, bodily injury, or assault.

Dempsey v. Dempsey, 227 S.W.3d 771 (Tex. App.—El Paso 2006, no pet.). A man who pushed his wife after she intervened in an altercation between the man and his stepson committed family violence; that the wife voluntarily placed herself in a dangerous situation and the perceived threat was not directed against her are not defenses to family violence.

Gonzalez v. Rangel, No. 13-05-641-CV, 2006 WL 2371464 (Tex. App.—Corpus Christi Aug. 17, 2006, no pet.) (mem. op.). Threatening to ruin a man's career, telling him that she had shot her ex-husband, making multiple telephone calls to the man and telling him over the telephone while he was in Iraq that if he did not come home he would die were acts that were legally insufficient to constitute threats of family violence because no imminent threat of family violence existed.

Jakobe v. Jakobe, No. 2-04-068-CV, 2005 WL 503124 (Tex. App.—Fort Worth Mar. 3, 2005, no pet.) (mem. op.) (per curiam). Failing to inform his spouse that he had been HIV positive for a number of years, not using a condom when with her, and telling her he tried to infect her because he did not want to die alone, among other evidence, supported a finding of family violence.

In re Lewis, No. 11-04-00075-CV, 2005 WL 1903571 (Tex. App.—Eastland Aug. 11, 2005, no pet.) (mem. op.). Two angry telephone calls, in the first of which the respondent said, "When I see you again, I'm going to stomp your ass until they bury you," constituted sufficient evidence to support a finding that the applicant feared imminent physical harm, bodily injury, or assault.

Thompson v. Thompson-O'Rear, No. 06-03-00129-CV (Tex. App.—Texarkana June 8, 2004, no pet.) (mem. op.). Although at some point verbal harassment may transform into an active threat, verbal harassment alone does not constitute family violence when there is no threat of physical harm.

Manning v. State, 112 S.W.3d 740 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd). Even though not living together at the time of an assault, a man and woman were members of the same household when they "were a couple" at the time, had lived together "off and on," and the woman had at times used the man's surname and called herself his wife.

Sec. 71.005. HOUSEHOLD

"Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

Davis v. State, 533 S.W.3d 498 (Tex. App.—Corpus Christi 2017, pet. ref'd). The "plain meaning of 'household' does not encompass cellmates in a correctional facility such as a jail."

Shah v. State, 414 S.W.3d 808 (Tex. App.—Houston [1st Dist.] 2013, pet. ref'd). The court determined that a complainant and defendant were members of the same household even though there was no evidence that both individuals had a legal right to be there. Here, the victim repeatedly testified that the defendant was living with him in the apartment at the time of the assault and had moved some of his personal items into the apartment and "basically set up camp" there. Victim further testified that he stayed "every night" and "never left."

Teel v. Shifflett, 309 S.W.3d 597 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). The parties were members of the same household when they intended to marry, the woman was pregnant with the man's child, the woman had lived with the man for the past month, and she moved into his house the day before she committed family violence against the man.

Gomez v. State, 183 S.W.3d 86 (Tex. App.—Tyler 2005, no pet.). The Texas legislature has established a low threshold to prove family violence. That the parties lived in the same dwelling for one and a half years was sufficient evidence that they were members of the same household even though the man would "come and go" because of the parties' disagreements, stayed with his mother when not with the woman, kept his clothes at his mother's house, took his baths at his mother's house, and paid his mother's rent.

Connor v. State, No. 03-04-00306-CR, 2005 WL 1940095 (Tex. App.—Austin Aug. 11, 2005, pet. ref'd) (mem. op.). Evidence that a man had been living in a woman's house for approximately three weeks, that they had had a sexual relationship, that he had paid to have the phone connected, and that he admitted that he had no other place to stay constituted sufficient evidence that the man was a member of the woman's household.

Sec. 71.006. MEMBER OF A HOUSEHOLD

"Member of a household" includes a person who previously lived in a household.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 71.007. PROSECUTING ATTORNEY

"Prosecuting attorney" means the attorney, determined as provided in this title, who represents the state in a district or statutory county court in the county in which venue of the application for a protective order is proper.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

CHAPTER 81. GENERAL PROVISIONS

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Sec. 81.001. ENTITLEMENT TO PROTECTIVE ORDER

A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred and is likely to occur in the future.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

COMMENTS

This section, and section 85.001, Required Findings and Orders, include identical requirements that a court must find that family violence has occurred, and is likely to occur in the future, to sign a protective order. Some courts cite to section 81.001, some to section 85.001, and some to both sections when analyzing whether family violence has occurred and is likely to occur in the future. Accordingly, annotations to section 85.001 should be reviewed in conjunction with annotations to section 81.001 when researching these issues.

This section, section 71.0021, Dating Violence, section 71.004, Family Violence, and section 85.001, Required Findings and Orders, all refer to "violence." Courts cite variously to these sections in determining what constitutes "family violence." Accordingly, annotations to this section should be reviewed in conjunction with annotations to sections 71.0021, 71.004, and 85.001 when researching what "violence" consists of.

Whether family violence is likely to occur in the future often relies upon the "past is prologue" principle—that the occurrence of family violence in the past evidences the continued likelihood that family violence will occur. This principle originated in termination cases, where evidence that a parent has engaged in abusive or neglectful conduct in the past permits an inference that the parent will continue this behavior in the future. The courts have extended this principle to applications for protective orders. *See Bruhl v. Roberts*, No. 09-08-00057-CV, 2009 WL 2461295 (Tex. App.—Beaumont Aug. 13, 2009, no pet.) (mem. op.) (summarizing cases).

ANNOTATIONS

Martin v. Martin, 545 S.W.3d 162 (Tex. App.—El Paso 2017, no pet.). Although evidence was presented regarding self-defense, ex-husband pushed ex-wife's face against a wall causing bruising around her eye, slapped her across the face, and shoved her on three separate meetings, thus justifying the trial court's finding of a likelihood of family violence in the future.

Burt v. Francis, No. 11-14-00244-CV, 2016 WL 4574286 (Tex. App.—Eastland Aug. 25, 2016, no pet.). Verbal threats, violent gestures, and escalating conduct that reasonably placed the applicant in fear of imminent harm constituted family violence.

Johnson v. Johnson, No. 13-12-00080-CV, 2012 WL 3525655 (Tex. App.—Corpus Christi Aug. 16, 2012, no pet.) (mem. op.). A single instance of family violence, in which a husband pointed a cocked shotgun at a wife and told her to "get the [expletive deleted] out," coupled with the wife's testimony that the husband had a short temper and that there was a potential for him to continue acting in a violent manner, constituted sufficient evidence that family violence was likely to occur in the future.

Boyd v. Palmore, 425 S.W.3d 425 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Given the remedial nature of Tex. Fam. Code tit. 4, courts should broadly construe its provisions to effectuate its humanitarian and preventive purposes. Blocking a car, then jumping on the car's hood, followed by harassment via text messages is sufficient evidence of family violence because those acts threaten violence. Further, section 81.001 does not require that a finding that family violence is likely to occur in the future be based on more than one act of family violence.

Dennis v. Rowe, No. 02-10-00288-CV, 2011 WL 3546618 (Tex. App.—Fort Worth Aug. 11, 2011, no pet.) (mem. op.) (per curiam). A single act of family violence, coupled with a course of conduct of abusive behavior, constitutes legally and factually sufficient evidence to support a finding that family violence is likely to occur in the future.

Gonzalez v. Galvan, No. 13-08-488-CV, 2009 WL 1089472 (Tex. App.—Corpus Christi Apr. 23, 2009, no pet.) (mem. op.). A protective order applicant failed to establish that family violence was likely to occur in the future when she admitted having lied about a past incident and had written loving letters to the respondent and telephoned him after she claimed prior attacks had occurred.

Schaban-Maurer v. Maurer-Schaban, 238 S.W.3d 815 (Tex. App.—Fort Worth 2007, no pet.), *overruled in part on other grounds by Iliff v. Iliff*, 339 S.W.3d 74 (Tex. 2011)). Single, isolated acts of past violence—without more—will not support a finding that family violence is likely to occur in the future.

Sec. 81.0015. PRESUMPTION

For purposes of this subtitle, there is a presumption that family violence has occurred and is likely to occur in the future if:

(1) the respondent has been convicted of or placed on deferred adjudication community supervision for any of the following offenses against the child for whom the petition is filed:

(A) an offense under Title 5, Penal Code, for which the court has made an affirmative finding that the offense involved family violence under Article 42.013, Code of Criminal Procedure; or

(B) an offense under Title 6, Penal Code;

(2) the respondent's parental rights with respect to the child have been terminated; and

(3) the respondent is seeking or attempting to seek contact with the child.

Added by Acts 2015, 84th Leg., R.S., Ch. 1241 (H.B. 1782), Sec. 1, eff. September 1, 2015.

Sec. 81.002. NO FEE FOR APPLICANT

An applicant for a protective order or an attorney representing an applicant may not be assessed a fee, cost, charge, or expense by a district or county clerk of the court or a sheriff, constable, or other public official or employee in connection with the filing, serving, or entering of a protective order or for any other service described by this subsection, including:

(1) a fee to dismiss, modify, or withdraw a protective order;

(2) a fee for certifying copies;

(3) a fee for comparing copies to originals;

(4) a court reporter fee;

(5) a judicial fund fee;

(6) a fee for any other service related to a protective order; or

(7) a fee to transfer a protective order.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 3, eff. Sept. 1, 1997.

ANNOTATIONS

Reyes v. Reyes, No. 04-02-00758-CV, 2003 WL 22238914 (Tex. App.—San Antonio Oct. 1, 2003, no pet.) (mem. op.). An applicant for a protective order need not post a bond, which is required for an injunction under Tex. R. Civ. P. 684; section 81.002 prohibits the charging of any fee, cost, charge, or expense to an applicant.

Sec. 81.003. FEES AND COSTS PAID BY PARTY FOUND TO HAVE COMMITTED FAMILY VIOLENCE

(a) Except on a showing of good cause or of the indigence of a party found to have committed family violence, the court shall require in a protective order that the party against whom the order is rendered pay the $16 protective order fee, the standard fees charged by the clerk of the court in a general civil proceeding for the cost of serving the order, the costs of court, and all other fees, charges, or expenses incurred in connection with the protective order.

(b) The court may order a party against whom an agreed protective order is rendered under Section 85.005 to pay the fees required in Subsection (a).

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 4, eff. Sept. 1, 1997.

Sec. 81.004. CONTEMPT FOR NONPAYMENT OF FEE

(a) A party who is ordered to pay fees and costs and who does not pay before the date specified by the order may be punished for contempt of court as provided by Section 21.002, Government Code.

(b) If a date is not specified by the court under Subsection (a), payment of costs is required before the 60th day after the date the order was rendered.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 5, eff. Sept. 1, 1997.

ANNOTATIONS

In re Skero, 253 S.W.3d 884 (Tex. App.—Beaumont 2008, orig proceeding). A contempt proceeding that results in a respondent's incarceration for failing to pay an award of attorney's fees ordered in a protective order does not violate the constitutional prohibition on imprisonment for debt under Tex. Const. art. I, § 18, because a protective order enforces a legal duty rather than a contractual agreement between the parties.

Sec. 81.005. ATTORNEY'S FEES

(a) The court may assess reasonable attorney's fees against the party found to have committed family violence or a party against whom an agreed protective order is rendered under Section 85.005 as compensation for the services of a private or prosecuting attorney or an attorney employed by the Department of Family and Protective Services.

(b) In setting the amount of attorney's fees, the court shall consider the income and ability to pay of the person against whom the fee is assessed.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 6, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 4, eff. May 21, 2011.

ANNOTATIONS

Monroy v. Monroy, No. 03-10-00275-CV, 2011 WL 3890401 (Tex. App.—Austin Aug. 31, 2011, pet. denied) (mem. op.). This section does not require a showing of "good cause" for an award of attorney's fees.

In re S.S., 217 S.W.3d 685 (Tex. App.—Eastland 2007, no pet.). During the effective period of a protective order, a trial court retains the power to modify the protective order by adding to or deleting items from it, including the power to award the applicant attorney's fees incurred by the applicant because of the respondent's unsuccessful appeal of the protective order.

In re A.W.R., No. 10-09-00237-CV, 2010 WL 3272304 (Tex. App.—Waco Aug. 11, 2010, no pet.) (mem. op.). Although a prosecutor must disclose exculpatory evidence in criminal cases, a prosecutor or private attorney need not do so in civil cases. Applications for protective orders are civil cases, so neither a prosecutor nor a private attorney is required to disclose exculpatory evidence. Accordingly, there is no violation of due process or equal protection rights when a private attorney files an application for a protective order.

Sharpe v. McDole, No. 03-09-00139-CV, 2010 WL 2919849 (Tex. App.—Austin May 19, 2010, pet. denied) (mem. op.). The court of appeals affirmed an award of attorney's fees when the respondent offered neither controverting evidence concerning attorney's fees nor evidence of inability to pay.

Ford v. Harbour, No. 14-07-00832-CV, 2009 WL 679672 (Tex. App.—Houston [14th Dist.] Mar. 17, 2009, no pet.) (mem. op.). This section requires an applicant for a protective order to request attorney's fees and to introduce competent evidence that the fees charged were reasonable. The respondent then bears the burden of proof of inability to pay.

Sec. 81.006. PAYMENT OF ATTORNEY'S FEES

The amount of fees collected under this chapter as compensation for the fee:

(1) of a private attorney shall be paid to the private attorney who may enforce the order for fees in the attorney's own name;

(2) of a prosecuting attorney shall be paid to the credit of the county fund from which the salaries of the employees of the prosecuting attorney are paid or supplemented; and

(3) of an attorney employed by the Department of Family and Protective Services shall be deposited in the general revenue fund to the credit of the Department of Family and Protective Services.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 5, eff. May 21, 2011.

ANNOTATIONS

Monroy v. Monroy, No. 03-10-00275-CV, 2011 WL 3890401 (Tex. App.—Austin Aug. 31, 2011, pet. denied) (mem. op.). This section does not require a showing of "good cause" for an award of attorney's fees.

In re A.W.R., No. 10-09-00237-CV, 2010 WL 3272304 (Tex. App.—Waco Aug. 11, 2010, no pet.) (mem. op.). Although a prosecutor must disclose exculpatory evidence in criminal cases, a prosecutor or private attorney need not do so in civil cases. Applications for protective orders are civil cases, so neither a prosecutor nor a private attorney is required to disclose exculpatory evidence. Accordingly, there is no violation of due process or equal protection rights when a private attorney files an application for a protective order.

Ford v. Harbour, No. 14-07-00832-CV, 2009 WL 679672 (Tex. App.—Houston [14th Dist.] Mar. 17, 2009, no pet.) (mem. op.). Although this section authorizes a county attorney or criminal district attorney to file an application for a protective order, it also allows the applicant to retain private counsel to file an application and an award of attorney's fees to private counsel.

Sec. 81.007. PROSECUTING ATTORNEY

(a) The county attorney or the criminal district attorney is the prosecuting attorney responsible for filing applications under this subtitle unless the district attorney assumes the responsibility by giving notice of that assumption to the county attorney.

(b) The prosecuting attorney responsible for filing an application under this subtitle shall provide notice of that responsibility to all law enforcement agencies in the jurisdiction of the prosecuting attorney.

(c) The prosecuting attorney shall comply with Article 5.06, Code of Criminal Procedure, in filing an application under this subtitle.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

Striedel v. Striedel, 15 S.W.3d 163 (Tex. App.—Corpus Christi 2000, no pet.). An indigent respondent to a protective order proceeding may ask the court to appoint an attorney to represent him or her in a final protective order hearing (see also Tex. Gov't Code § 24.016). While a respondent to a protective order hearing is not statutorily guaranteed the right to counsel for a protective order hearing, the trial court should consider the same due to the quasi-criminal nature of such proceedings.

Sec. 81.0075. Representation by Prosecuting Attorney in Certain Other Actions

Subject to the Texas Disciplinary Rules of Professional Conduct, a prosecuting attorney is not precluded from representing a party in a proceeding under this subtitle and the Department of Family and Protective Services in another action involving the party, regardless of whether the proceeding under this subtitle occurs before, concurrently with, or after the other action involving the party.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 7, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 6, eff. May 21, 2011. Acts 2013, 83rd Leg., R.S., Ch. 393 (S.B. 130), Sec. 1, eff. June 14, 2013.

Sec. 81.008. Relief Cumulative

Except as provided by this subtitle, the relief and remedies provided by this subtitle are cumulative of other relief and remedies provided by law.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 81.009. Appeal

(a) Except as provided by Subsections (b) and (c), a protective order rendered under this subtitle may be appealed.

(b) A protective order rendered against a party in a suit for dissolution of a marriage may not be appealed until the time the final decree of dissolution of the marriage becomes a final, appealable order.

(c) A protective order rendered against a party in a suit affecting the parent-child relationship may not be appealed until the time an order providing for support of the child or possession of or access to the child becomes a final, appealable order.

Added by Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 2, eff. June 18, 2005.

COMMENTS

At one time, a difference of opinion existed among the courts of appeals about whether protective orders issued against a party in a divorce suit or SAPCR were interlocutory for appellate purposes until the divorce suit or SAPCR had been concluded. Section 81.009, enacted in 2005, resolved that issue in favor of appealability upon finality of the judgment, order, or decree in the underlying proceeding.

However, mandamus may still be an appropriate vehicle for reviewing a protective order when brought with a divorce suit or SAPCR. *See, e.g., In re Wean*, No. 03-10-00383-CV, 2010 WL 3431708 (Tex. App.—Austin Aug. 30, 2010, orig. proceeding) (mem. op.) (mandamus was appropriate when protective order action was consolidated with the pending SAPCR and therefore father had no adequate remedy on appeal).

A disagreement remains among the courts of appeals as to the standard of review to be applied to appeals of protective orders. Reasoning that protective orders provide relief similar to that of an injunction, some courts have applied an abuse of discretion standard of review, while others have reviewed protective orders under the legal and factual sufficiency standards of review. *See, e.g., Wargocz v. Brewer*, No. 02-17-00178-CV, 2018 WL 4924755 (Tex. App.—Fort Worth Oct. 11, 2018, no pet.) (mem. op.); *K.D. v. D.D.*, No. 04-09-00091-CV, 2010 WL 724373 (Tex. App.—San Antonio Mar. 3, 2010, no pet.) (mem. op.).

Often, a protective order will expire while an appeal is pending. Ordinarily, that event would moot the appeal. But the appellate courts have applied the "collateral consequences doctrine" to appeals of expired protective orders. The doctrine states that an otherwise moot judgment, order, or decree nevertheless may be appealed if concrete disadvantages imposed by law will persist even after the order is vacated. In the protective order context, these disadvantages could include entry of information contained in protective orders into the statewide law enforcement information system maintained by the Texas Department of Public Safety (*see* Tex. Fam. Code § 86.0011); suspension of a concealed-carry firearm permit (Tex. Fam. Code § 85.022); and an adverse impact in SAPCRs. *E.g., Martin v. Martin*, 545 S.W.3d 162 (Tex. App.—El Paso 2017, no pet.); *Wargocz v. Brewer*, No. 02-17-00178-CV, 2018 WL 4924755 (Tex. App.—Fort Worth Oct. 11, 2018, no pet.) (mem. op.); *see also Martin v. Parris*, No. 06-10-00037-CV, 2011 WL 766653 (Tex. App.—Texarkana Mar. 4, 2011, no pet.) (mem. op.).

RESOURCES

Frederick S. Adams, Jr. & Hunter Lewis, *Civil and Criminal Ramifications of a Family Violence Protective Order*, Adv. Fam. L. (2010).

Sec. 81.010. COURT ENFORCEMENT

(a) A court of this state with jurisdiction of proceedings arising under this title may enforce a protective order rendered by another court in the same manner that the court that rendered the order could enforce the order, regardless of whether the order is transferred under Subchapter D, Chapter 85.

(b) A court's authority under this section includes the authority to enforce a protective order through contempt.

(c) A motion for enforcement of a protective order rendered under this title may be filed in:

(1) any court in the county in which the order was rendered with jurisdiction of proceedings arising under this title;

(2) a county in which the movant or respondent resides; or

(3) a county in which an alleged violation of the order occurs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 632 (S.B. 819), Sec. 1, eff. September 1, 2011.

Sec. 81.011. USE OF DIGITIZED SIGNATURE

(a) A digitized signature on an application for a protective order under this title or any other pleading or order in a proceeding under this title satisfies the requirements for and imposes the duties of signatories to pleadings, motions, and other papers identified under Rule 13, Texas Rules of Civil Procedure.

(b) A digitized signature under this section may be applied only by, and must remain under the sole control of, the person whose signature is represented.

Added by Acts 2015, 84th Leg., R.S., Ch. 1165 (S.B. 813), Sec. 3, eff. September 1, 2015.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

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SUBCHAPTER A. APPLICATION FOR PROTECTIVE ORDER

Sec. 82.001. APPLICATION

A proceeding under this subtitle is begun by filing "An Application for a Protective Order" with the clerk of the court.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 82.002. WHO MAY FILE APPLICATION

(a) With regard to family violence under Section 71.004(1) or (2), an adult member of the family or household may file an application for a protective order to protect the applicant or any other member of the applicant's family or household.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 872 (S.B. 116), Sec. 3

(b) With regard to family violence under Section 71.004(3), an application for a protective order to protect the applicant may be filed by:

(1) an adult member of the dating relationship; or

(2) an adult member of the marriage, if the victim is or was married as described by Section 71.0021(a)(1)(B).

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 632 (S.B. 819), Sec. 2

(b) With regard to family violence under Section 71.004(3), an application for a protective order to protect the applicant may be filed by a member of the dating relationship, regardless of whether the member is an adult or a child.

(c) Any adult may apply for a protective order to protect a child from family violence.

(d) In addition, an application may be filed for the protection of any person alleged to be a victim of family violence by:

(1) a prosecuting attorney; or

(2) the Department of Family and Protective Services.

(e) The person alleged to be the victim of family violence in an application filed under Subsection (c) or (d) is considered to be the applicant for a protective order under this subtitle.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 91, Sec. 3, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 7, eff. May 21, 2011. Acts 2011, 82nd Leg., R.S., Ch. 632 (S.B. 819), Sec. 2, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 872 (S.B. 116), Sec. 3, eff. June 17, 2011.

ANNOTATIONS

B.C. v. Rhodes, 116 S.W.3d 878 (Tex. App.—Austin 2003, no pet.). That an application for a protective order can be filed by an adult member of a dating relationship does not restrict the class of those adults who can file because any adult may file an application for a protective order on behalf of any child.

Sec. 82.003. VENUE

An application may be filed in:

(1) the county in which the applicant resides;

(2) the county in which the respondent resides; or

(3) any county in which the family violence is alleged to have occurred.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 392 (S.B. 129), Sec. 1, eff. June 14, 2013.

COMMENTS

The Family Code does not define the terms for residency, nor does it prescribe the length of time necessary to establish residency for purposes of obtaining proper venue. The Texas Supreme Court, however, has held in other cases that the elements of residency are (1) a fixed place of abode within the party's possession; (2) that is occupied or intended to be occupied consistently over a period of time; and (3) which is permanent rather than temporary. *In re Salgado*, 53 S.W.3d 752 (Tex. App.—El Paso 2001, orig. proceeding).

ANNOTATIONS

In re Salgado, 53 S.W.3d 752 (Tex. App.—El Paso 2001, orig. proceeding). Title 4 of the Family Code plainly contemplates that an application for a protective order may be filed on behalf of a child who is subject to the continuing jurisdiction of another court under Title 5.

Sec. 82.004. CONTENTS OF APPLICATION

An application must state:

(1) the name and county of residence of each applicant;

(2) the name and county of residence of each individual alleged to have committed family violence;

(3) the relationships between the applicants and the individual alleged to have committed family violence;

(4) a request for one or more protective orders; and

(5) whether an applicant is receiving services from the Title IV-D agency in connection with a child support case and, if known, the agency case number for each open case.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 296, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 3, eff. September 1, 2013.

COMMENTS

This section sets out the minimum requirements for an application for a protective order. Depending on the procedural status of an application and the relief sought, other sections of subtitle B of this chapter impose more specific pleading requirements. These sections include: section 82.008 (Application Filed After Expiration of Former Protective Order); section 82.0085 (Application Filed Before Expiration of Previously Rendered Protective Order); section 82.009 (Application for Temporary Ex Parte Order); and section 83.006 (Exclusion of Party From Residence).

If discovery will be needed, the application must also state whether discovery is intended to be conducted under level 3. The fourteen-day deadline for conducting a hearing on the application (or twenty days, if extended) creates a procedural hurdle to conducting discovery under the normal thirty-day time periods provided by the Texas Rules of Civil Procedure. However, a level 3 discovery-control plan allows the parties to shorten time periods for discovery, which can be particularly useful in protective order proceedings. *See Martinez v. Martinez*, 52 S.W.3d 429, 432 (Tex. App.—Fort Worth 2001, pet. denied).

ANNOTATIONS

Boyd v. Palmore, 425 S.W.3d 425 (Tex. App.—Houston [1st Dist.] 2011, no pet.). A protective order applicant need not specify incidents of violence. Under section 82.004, an application for a protective order need contain only: (1) the

name and county of residence of the applicant; (2) the name and county of residence of the individual alleged to have committed family violence; (3) the relationship between the applicant and the individual; and (4) a request for a protective order.

Bruhl v. Roberts, No. 09-08-00057-CV, 2009 WL 2461295 (Tex. App.—Beaumont Aug. 13, 2009, no pet.) (mem. op.). A trial court did not err when it refused to strike an application for a protective order for failure to state the clerk's address when the protective order identified the court, the respondent signed for service, the respondent filed an answer, and he appeared and testified at the hearing.

State ex rel. Cockerham v. Cockerham, 218 S.W.3d 298 (Tex. App.—Texarkana 2007, no pet.). This section does not require an application for a protective order to specify the act or acts that precipitated the claim of family violence even as to the time or place it occurred.

Sec. 82.005. Application Filed During Suit for Dissolution of Marriage or Suit Affecting Parent-Child Relationship

A person who wishes to apply for a protective order with respect to the person's spouse and who is a party to a suit for the dissolution of a marriage or a suit affecting the parent-child relationship that is pending in a court must file the application as required by Subchapter D, Chapter 85.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 9, eff. Sept. 1, 1997.

Sec. 82.006. Application Filed After Dissolution of Marriage

If an applicant for a protective order is a former spouse of the individual alleged to have committed family violence, the application must include:

(1) a copy of the decree dissolving the marriage; or

(2) a statement that the decree is unavailable to the applicant and that a copy of the decree will be filed with the court before the hearing on the application.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

In re M.I.W., No. 04-17-00207-CV, 2018 WL 1831678 (Tex. App.—San Antonio Apr. 18, 2018, no pet.) (mem. op.). If a party does not file special exception or otherwise complain about the other party's failure to include a copy of their divorce decree and prior court orders, the complaint is not preserved for appeal.

Sec. 82.007. Application Filed for Child Subject to Continuing Jurisdiction

An application that requests a protective order for a child who is subject to the continuing exclusive jurisdiction of a court under Title 5 or alleges that a child who is subject to the continuing exclusive jurisdiction of a court under Title 5 has committed family violence must include:

(1) a copy of each court order affecting the conservatorship, support, and possession of or access to the child; or

(2) a statement that the orders affecting the child are unavailable to the applicant and that a copy of the orders will be filed with the court before the hearing on the application.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 82.008. APPLICATION FILED AFTER EXPIRATION OF FORMER PROTECTIVE ORDER

(a) An application for a protective order that is filed after a previously rendered protective order has expired must include:

(1) a copy of the expired protective order attached to the application or, if a copy of the expired protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application;

(2) a description of either:

(A) the violation of the expired protective order, if the application alleges that the respondent violated the expired protective order by committing an act prohibited by that order before the order expired; or

(B) the threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault; and

(3) if a violation of the expired order is alleged, a statement that the violation of the expired order has not been grounds for any other order protecting the applicant that has been issued or requested under this subtitle.

(b) The procedural requirements for an original application for a protective order apply to a protective order requested under this section.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1999, 76th Leg., ch. 1160, Sec. 1, eff. Sept. 1, 1999.

ANNOTATIONS

Bruhl v. Roberts, No. 09-08-00057-CV, 2009 WL 2461295 (Tex. App.—Beaumont Aug. 13, 2009, no pet.) (mem. op.). The detailed requirements of this section apply only when a prior protective order has been issued. Because there had been no prior protective order, section 85.001 applied. Under that section, the trial court did not err when it refused to strike an application for a protective order for failure to state the clerk's address when the protective order identified the court, the respondent signed for service, the respondent filed an answer, and he appeared and testified at the hearing.

Sec. 82.0085. APPLICATION FILED BEFORE EXPIRATION OF PREVIOUSLY RENDERED PROTECTIVE ORDER

(a) If an application for a protective order alleges that an unexpired protective order applicable to the respondent is due to expire not later than the 30th day after the date the application was filed, the application for the subsequent protective order must include:

(1) a copy of the previously rendered protective order attached to the application or, if a copy of the previously rendered protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application; and

(2) a description of the threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) The procedural requirements for an original application for a protective order apply to a protective order requested under this section.

Added by Acts 1999, 76th Leg., ch. 1160, Sec. 2, eff. Sept. 1, 1999.

ANNOTATIONS

Hancock v. Worbington, No. 14-15-00964-CV, 2017 WL 1181308 (Tex. App.—Houston [14th Dist.] Mar. 30, 2017, no pet.) (mem. op.). Although the applicant failed to attach a copy of the previously rendered protective order to the application, because the appellant did not present a complaint to the trial court by timely request, motion, or objection, the issue was not preserved for appeal and the granting of the subsequent protective order was upheld.

Sec. 82.009. APPLICATION FOR TEMPORARY EX PARTE ORDER

(a) An application that requests the issuance of a temporary ex parte order under Chapter 83 must:

(1) contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for the immediate protective order; and

(2) be signed by each applicant under an oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant.

(b) For purposes of this section, a statement signed under oath by a child is valid if the statement otherwise complies with this chapter.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 632 (S.B. 819), Sec. 3, eff. September 1, 2011.

Sec. 82.010. CONFIDENTIALITY OF APPLICATION

(a) This section applies only in a county with a population of 3.4 million or more.

(b) Except as otherwise provided by law, an application for a protective order is confidential, is excepted from required public disclosure under Chapter 552, Government Code, and may not be released to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner.

(c) Except as otherwise provided by law, an application requesting the issuance of a temporary ex parte order under Chapter 83 is confidential, is excepted from required public disclosure under Chapter 552, Government Code, and may not be released to a person who is not a respondent to the application until after the date that the court or law enforcement informs the respondent of the court's order.

Acts 2003, 78th Leg., ch. 1314, Sec. 2, eff. Sept. 1, 2003.

Sec. 82.011. CONFIDENTIALITY OF CERTAIN INFORMATION

On request by an applicant, the court may protect the applicant's mailing address by rendering an order:

(1) requiring the applicant to:

(A) disclose the applicant's mailing address to the court;

(B) designate a person to receive on behalf of the applicant any notice or documents filed with the court related to the application; and

(C) disclose the designated person's mailing address to the court;

(2) requiring the court clerk to:

(A) strike the applicant's mailing address from the public records of the court, if applicable; and

(B) maintain a confidential record of the applicant's mailing address for use only by the court; and

(3) prohibiting the release of the information to the respondent.

Added by Acts 2017, 85th Leg., R.S., Ch. 422 (S.B. 1242), Sec. 1, eff. Sept. 1, 2017.

SUBCHAPTER B. PLEADINGS BY RESPONDENT

Sec. 82.021. ANSWER

A respondent to an application for a protective order who is served with notice of an application for a protective order may file an answer at any time before the hearing. A respondent is not required to file an answer to the application.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 82.022. REQUEST BY RESPONDENT FOR PROTECTIVE ORDER

To apply for a protective order, a respondent to an application for a protective order must file a separate application.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

Moreno v. Moore, 897 S.W.2d 439 (Tex. App.—Corpus Christi 1995, no writ). A trial court erred when it signed a mutual protective order because the respondent did not file any pleadings seeking a protective order.

State ex rel. Cockerham v. Cockerham, 218 S.W.3d 298 (Tex. App.—Texarkana 2007, no pet.). A trial court may not grant a protective order sua sponte to a party who did not file an application for a protective order.

SUBCHAPTER C. NOTICE OF APPLICATION FOR PROTECTIVE ORDER

Sec. 82.041. CONTENTS OF NOTICE OF APPLICATION

(a) A notice of an application for a protective order must:

(1) be styled "The State of Texas";

(2) be signed by the clerk of the court under the court's seal;

(3) contain the name and location of the court;

(4) show the date the application was filed;

(5) show the date notice of the application for a protective order was issued;

(6) show the date, time, and place of the hearing;

(7) show the file number;

(8) show the name of each applicant and each person alleged to have committed family violence;

(9) be directed to each person alleged to have committed family violence;

(10) show:

(A) the name and address of the attorney for the applicant; or

(B) if the applicant is not represented by an attorney:

(i) the mailing address of the applicant; or

(ii) if applicable, the name and mailing address of the person designated under Section 82.011; and

(11) contain the address of the clerk of the court.

(b) The notice of an application for a protective order must state: "An application for a protective order has been filed in the court stated in this notice alleging that you have committed family violence. You may employ an attorney to defend you against this allegation. You or your attorney may, but are not required to, file a written answer to the application. Any answer must be filed before the hearing on the application. If you receive this notice within 48 hours before the time set for the hearing, you may request the court to reschedule the hearing not later than 14 days after the date set for the hearing. If you do not attend the hearing, a default judgment may be taken and a protective order may be issued against you."

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 10, eff. Sept. 1, 1997; Acts 2017, 85th Leg., R.S., Ch. 422 (S.B. 1242), Sec. 2, eff. Sept. 1, 2017.

ANNOTATIONS

Zubiate v. Zubiate, No. 11-16-00102-CV, 2017 WL 1749747 (Tex. App.—Eastland May 4, 2017, no pet.) (mem. op.). During a divorce proceeding, the father filed an application for a protective order in a separate suit. Mother's divorce attorney was not the attorney of record in the protective order suit. Sending a "courtesy copy" of the notice of hearing in the protective order suit to the divorce attorney did not constitute notice to the mother of the hearing.

Warren v. Early, No. 10-10-00428-CV, 2011 WL 3850035 (Tex. App.—Waco Aug. 31, 2011, no pet.) (mem. op.). A trial court may amend a protective order to add additional prohibitions without notice to the respondent if the amended protective order is signed during the period of the trial court's plenary jurisdiction.

Sec. 82.042. ISSUANCE OF NOTICE OF APPLICATION

(a) On the filing of an application, the clerk of the court shall issue a notice of an application for a protective order and deliver the notice as directed by the applicant.

(b) On request by the applicant, the clerk of the court shall issue a separate or additional notice of an application for a protective order.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 82.043. SERVICE OF NOTICE OF APPLICATION

(a) Each respondent to an application for a protective order is entitled to service of notice of an application for a protective order.

(b) An applicant for a protective order shall furnish the clerk with a sufficient number of copies of the application for service on each respondent.

(c) Notice of an application for a protective order must be served in the same manner as citation under the Texas Rules of Civil Procedure, except that service by publication is not authorized.

(d) Service of notice of an application for a protective order is not required before the issuance of a temporary ex parte order under Chapter 83.

(e) The requirements of service of notice under this subchapter do not apply if the application is filed as a motion in a suit for dissolution of a marriage. Notice for the motion is given in the same manner as any other motion in a suit for dissolution of a marriage.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

CHAPTER 83. TEMPORARY EX PARTE ORDERS

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Sec. 83.001. REQUIREMENTS FOR TEMPORARY EX PARTE ORDER

(a) If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant.

(b) In a temporary ex parte order, the court may direct a respondent to do or refrain from doing specified acts.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 91, Sec. 4, eff. Sept. 1, 2001.

Sec. 83.002. DURATION OF ORDER; EXTENSION

(a) A temporary ex parte order is valid for the period specified in the order, not to exceed 20 days.

(b) On the request of an applicant or on the court's own motion, a temporary ex parte order may be extended for additional 20-day periods.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

Amir-Sharif v. Hawkins, 246 S.W.3d 267 (Tex. App.—Dallas 2007, pet. dism'd w.o.j.). Extending a temporary ex parte protective order for sixty days, rather than twenty days, does not deprive a trial court of jurisdiction over the application for a protective order.

Sec. 83.003. BOND NOT REQUIRED

The court, at the court's discretion, may dispense with the necessity of a bond for a temporary ex parte order.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 83.004. MOTION TO VACATE

Any individual affected by a temporary ex parte order may file a motion at any time to vacate the order. On the filing of the motion to vacate, the court shall set a date for hearing the motion as soon as possible.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 91, Sec. 5, eff. Sept. 1, 2001.

ANNOTATIONS

In re Goddard, No. 12-18-00355, 2019 WL 456866 (Tex. App.—Tyler Feb. 6, 2019, no pet.) (mem. op.). Section 83.004 contains no express language either permitting or prohibiting the sua sponte setting aside of a temporary protective order but does appear to require a hearing before a court can vacate a temporary protective order.

In re I.E.W., No. 13-09-00216-CV, 2010 WL 3418276 (Tex. App.—Corpus Christi Aug. 27, 2010, no pet.) (mem. op.). It is reversible error for a trial court to deny a motion to vacate a protective order that does not include a finding that family violence is likely to occur in the future. Further, it is reversible error for a trial court to deny a motion to vacate an agreed protective order that essentially forbade any contact between one parent and the child because the restrictions on contact exceeded that which was necessary to protect the child's best interest.

Amir–Sharif v. Hawkins, 246 S.W.3d 267 (Tex. App.—Dallas 2007, pet. dism'd w.o.j.). To meet the requirements of this section, a respondent must file a motion to vacate a temporary ex parte protective order, not a motion to vacate the application for a temporary ex parte protective order.

Sec. 83.005. CONFLICTING ORDERS

During the time the order is valid, a temporary ex parte order prevails over any other court order made under Title 5 to the extent of any conflict between the orders.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 11, eff. Sept. 1, 1997.

COMMENTS

Section 83.005 does not apply to a magistrate's protective order. If a magistrate's emergency order is already in effect, the application should state the same so that the trial court issuing the temporary ex parte order can make a finding that the temporary ex parte order is superseding the magistrate's emergency order. Otherwise, the conditions imposed by the magistrate's emergency order will prevail pursuant to Tex. Code Crim. Proc. art. 17.292(f–2).

Sec. 83.006. EXCLUSION OF PARTY FROM RESIDENCE

(a) Subject to the limitations of Section 85.021(2), a person may only be excluded from the occupancy of the person's residence by a temporary ex parte order under this chapter if the applicant:

(1) files a sworn affidavit that provides a detailed description of the facts and circumstances requiring the exclusion of the person from the residence; and

(2) appears in person to testify at a temporary ex parte hearing to justify the issuance of the order without notice.

(b) Before the court may render a temporary ex parte order excluding a person from the person's residence, the court must find from the required affidavit and testimony that:

(1) the applicant requesting the excluding order either resides on the premises or has resided there within 30 days before the date the application was filed;

(2) the person to be excluded has within the 30 days before the date the application was filed committed family violence against a member of the household; and

(3) there is a clear and present danger that the person to be excluded is likely to commit family violence against a member of the household.

(c) The court may recess the hearing on a temporary ex parte order to contact the respondent by telephone and provide the respondent the opportunity to be present when the court resumes the hearing. Without regard to whether the respondent is able to be present at the hearing, the court shall resume the hearing before the end of the working day.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 632 (S.B. 819), Sec. 4, eff. September 1, 2011.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

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Sec. 84.001. TIME SET FOR HEARING

(a) On the filing of an application for a protective order, the court shall set a date and time for the hearing unless a later date is requested by the applicant. Except as provided by Section 84.002, the court may not set a date later than the 14th day after the date the application is filed.

(b) The court may not delay a hearing on an application in order to consolidate it with a hearing on a subsequently filed application.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

In re Barbee, No. 12-09-00165-CV, 2010 WL 3341518 (Tex. App.—Tyler Aug. 25, 2010, orig. proceeding) (mem. op.); *Barbee v. Barbee*, No. 12-09-00151-CV, 2010 WL 4132766 (Tex. App.—Tyler Oct. 20, 2010, no pet.) (mem. op.). Failing to hear an application for a protective order within fourteen days of its filing date does not deprive a trial court of jurisdiction over the application for a protective order.

Sec. 84.002. EXTENDED TIME FOR HEARING IN DISTRICT COURT IN CERTAIN COUNTIES

(a) On the request of the prosecuting attorney in a county with a population of more than two million or in a county in a judicial district that is composed of more than one county, the district court shall set the hearing on a date and time not later than 20 days after the date the application is filed or 20 days after the date a request is made to reschedule a hearing under Section 84.003.

(b) The district court shall grant the request of the prosecuting attorney for an extended time in which to hold a hearing on a protective order either on a case-by-case basis or for all cases filed under this subtitle.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 12, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 17, eff. September 1, 2011.

Sec. 84.003. HEARING RESCHEDULED FOR FAILURE OF SERVICE

(a) If a hearing set under this chapter is not held because of the failure of a respondent to receive service of notice of an application for a protective order, the applicant may request the court to reschedule the hearing.

(b) Except as provided by Section 84.002, the date for a rescheduled hearing shall be not later than 14 days after the date the request is made.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 84.004. HEARING RESCHEDULED FOR INSUFFICIENT NOTICE

(a) If a respondent receives service of notice of an application for a protective order within 48 hours before the time set for the hearing, on request by the respondent, the court shall reschedule the hearing for a date not later than 14 days after the date set for the hearing.

(b) The respondent is not entitled to additional service for a hearing rescheduled under this section.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

Caballero v. Caballero, No. 14-16-00513-CV, 2017 WL 6374724 (Tex. App.—Houston [14th Dist.] Dec. 14, 2017, no pet.) (mem. op.). A party who was served two days before the hearing regarding a protective order could not appeal based on insufficient notice when the party did not preserve the complaint by making a timely request, objection, or motion in the trial court.

Sec. 84.005. LEGISLATIVE CONTINUANCE

If a proceeding for which a legislative continuance is sought under Section 30.003, Civil Practice and Remedies Code, includes an application for a protective order, the continuance is discretionary with the court.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 6.10(a), eff. Sept. 1, 1999.

Sec. 84.006. HEARSAY STATEMENT OF CHILD VICTIM OF FAMILY VIOLENCE

In a hearing on an application for a protective order, a statement made by a child 12 years of age or younger that describes alleged family violence against the child is admissible as evidence in the same manner that a child's statement regarding alleged abuse against the child is admissible under Section 104.006 in a suit affecting the parent-child relationship.

Added by Acts 2011, 82nd Leg., R.S., Ch. 59 (H.B. 905), Sec. 1, eff. September 1, 2011.

ANNOTATIONS

K.D. v. D.D., No. 04-09-00091-CV, 2010 WL 724373 (Tex. App.—San Antonio Mar. 3, 2010, no pet.) (mem. op.). A timely objection is necessary to preserve error when hearsay is offered.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

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SUBCHAPTER A. FINDINGS AND ORDERS

Sec. 85.001. REQUIRED FINDINGS AND ORDERS

(a) At the close of a hearing on an application for a protective order, the court shall find whether:

(1) family violence has occurred; and

(2) family violence is likely to occur in the future.

(b) If the court finds that family violence has occurred and that family violence is likely to occur in the future, the court:

(1) shall render a protective order as provided by Section 85.022 applying only to a person found to have committed family violence; and

(2) may render a protective order as provided by Section 85.021 applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order.

(c) A protective order that requires the first applicant to do or refrain from doing an act under Section 85.022 shall include a finding that the first applicant has committed family violence and is likely to commit family violence in the future.

(d) If the court renders a protective order for a period of more than two years, the court must include in the order a finding described by Section 85.025(a-1).

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 91, Sec. 6, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 627 (S.B. 789), Sec. 1, eff. September 1, 2011.

COMMENTS

This section and section 81.001, Entitlement to Protective Order, include identical requirements that a court must find that family violence has occurred and is likely to occur in the future to sign a protective order. Some courts cite to section 81.001, some to section 85.001, and some to both sections when analyzing whether family violence has occurred and is likely to occur in the future. Accordingly, annotations to section 81.001 should be reviewed in conjunction with annotations to section 85.001 when researching these issues.

This section, section 71.0021, Dating Violence, section 71.004, Family Violence, and section 81.001, Entitlement to Protective Order, all refer to "violence." Courts cite variously to these sections in determining what constitutes "family violence." Accordingly, annotations to this section should be reviewed in conjunction with annotations to sections 71.0021, 71.004, and 81.001 when researching what "violence" consists of.

Whether family violence is likely to occur in the future often relies upon the "past is prologue" principle—that the occurrence of family violence in the past evidences the continued likelihood that family violence will occur. This principle originated in termination cases, where evidence that a parent has engaged in abusive or neglectful conduct in the past permits an inference that the parent will continue this behavior in the future. The courts have extended this principle to applications for protective orders. *See Bruhl v. Roberts*, No. 09-08-00057-CV, 2009 WL 2461295 (Tex. App.—Beaumont Aug. 13, 2009, no pet.) (mem. op.) (summarizing cases).

ANNOTATIONS

In re M.I.W., No. 04-17-00207-CV, 2018 WL 1831678 (Tex. App.—San Antonio Apr. 18, 2018, no pet.) (mem. op.). Subsections 85.001(a) and (b) require a trial court to find whether family violence has occurred and is likely to occur in the future at the close of the hearing on the application for a protective order; however, no part of subsections (a) and (b) requires the court's findings to be express. In contrast, subsections 85.001(c) and (d) require the trial court to make express written findings. Accordingly, subsections 85.001(a) and (b) do not require the trial court to recite those findings either on the record or in the protective order itself.

Burt v. Francis, 528 S.W.3d 549 (Tex. App.—Eastland 2016, no pet.). The factfinder may conclude that an individual was reasonably placed in fear so as to support a finding of family violence and the issuance of a protective order, even in circumstances where no express threats were conveyed. Acts of the father, including threatening the child that he would never see him again, screaming and yelling at the mother and the child while standing over them, slamming his fist, using foul language, and calling the mother an evil person, reasonably placed the mother and child in fear and thus constituted family violence.

Coffman v. Melton, 448 S.W.3d 68 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). The trial court could consider events that predated the divorce in the evidence to issue a protective order, including the husband's spitting on, cursing at, and physically abusing his wife. The wife also testified that the husband violated the first order by "plastering vulgarities about her in the family home, and coming within 200 feet of her and the children at church." The appellate court found that there was more than a "scintilla of evidence" supporting the trial court's findings that family violence had occurred and was likely to occur again in the future.

Brownlee v. Daniel, No. 06-11-00136-CV, 2012 WL 3022660 (Tex. App.—Texarkana July 25, 2012, no pet.) (mem. op.). The use of predivorce decree evidence in a postdivorce hearing on an application for a protective order does not amount to a collateral attack on the decree. Such evidence may be admitted to corroborate evidence of postdecree family violence.

Johnson v. Johnson, No. 13-12-00080-CV, 2012 WL 3525655 (Tex. App.—Corpus Christi Aug. 16, 2012, no pet.) (mem. op.). A single instance of family violence, in which a husband pointed a cocked shotgun at a wife and told her to "get the [expletive deleted] out," coupled with the wife's testimony that the husband had a short temper and that there was a potential for him to continue acting in a violent manner, constituted sufficient evidence that family violence was likely to occur in the future.

Boyd v. Palmore, 425 S.W.3d 425 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Given the remedial nature of Tex. Fam. Code tit. 4, courts should broadly construe its provisions to effectuate its humanitarian and preventive purposes. Blocking a car, then jumping on the car's hood, followed by harassment via text messages is sufficient evidence of family violence because those acts threaten violence. Further, section 85.001 does not require that a finding that family violence is likely to occur in the future be based on more than one act of family violence.

Dennis v. Rowe, No. 02-10-00288-CV, 2011 WL 3546618 (Tex. App.—Fort Worth Aug. 11, 2011, no pet.) (mem. op.) (per curiam). A single act of family violence, coupled with a course of conduct of abusive behavior, constitutes legally and factually sufficient evidence to support a finding that family violence is likely to occur in the future.

In re Wean, No. 03-10-00383-CV, 2010 WL 3431708 (Tex. App.—Austin Aug. 31, 2010, orig. proceeding) (mem. op.). A mother's "suspicions or conjectures" of sexual abuse are insufficient to prove family violence. Also, spanking a child, in and of itself, does not constitute family violence.

State ex rel. Cockerham v. Cockerham, 218 S.W.3d 298 (Tex. App.—Texarkana 2007, no pet.). Subsection 85.001(b)(2), which allows a protective order "applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order," does not permit a court to issue such protective orders as it sees fit but requires that a person seeking a protective order file an application for a protective order.

Banargent v. Brent, No. 14-05-00574-CV, 2006 WL 462268 (Tex. App.—Houston [14th Dist.] Feb. 28, 2006, no pet.) (mem. op.). A life sentence for family violence assault does not rule out that family violence is likely to occur in the future, so the trial court did not err when it signed a protective order for the victim of the assault. Also, should the respondent be released from prison, subsection 85.025(c) would protect the victim by automatically extending the expiration date of the protective order to one year after the date of the respondent's release from prison.

In re J.A.T., No. 13-04-00477-CV, 2005 WL 1981497 (Tex. App.—Corpus Christi Aug. 18, 2005, no pet.) (mem. op.). Single, isolated acts of past violence—without more—will not support a finding that family violence is likely to occur in the future.

RESOURCES

Sallee S. Smyth, *Beginning at the End: Findings, Conclusions and Other Post Judgment Considerations*, Adv. Fam. L. (2017).

Sec. 85.002. EXCEPTION FOR VIOLATION OF EXPIRED PROTECTIVE ORDER

If the court finds that a respondent violated a protective order by committing an act prohibited by the order as provided by Section 85.022, that the order was in effect at the time of the violation, and that the order has expired after the date that the violation occurred, the court, without the necessity of making the findings described by Section 85.001(a), shall render a protective order as provided by Section 85.022 applying only to the respondent and may render a protective order as provided by Section 85.021.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 13, eff. Sept. 1, 1997.

ANNOTATIONS

Sharpe v. McDole, No. 03-09-00139-CV, 2010 WL 2919849 (Tex. App.—Austin May 19, 2010, pet. denied) (mem. op.). The only findings necessary to obtain a protective order based on a violation of an expired protective order are those set forth in this section. That the applicant also violated the prior protective order is not a defense to the issuance of a later protective order based on violation of the prior one.

Sec. 85.003. SEPARATE PROTECTIVE ORDERS REQUIRED

(a) A court that renders separate protective orders that apply to both parties and require both parties to do or refrain from doing acts under Section 85.022 shall render two distinct and separate protective orders in two separate documents that reflect the appropriate conditions for each party.

(b) A court that renders protective orders that apply to both parties and require both parties to do or refrain from doing acts under Section 85.022 shall render the protective orders in two separate documents. The court shall provide one of the documents to the applicant and the other document to the respondent.

(c) A court may not render one protective order under Section 85.022 that applies to both parties.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.004. PROTECTIVE ORDER IN SUIT FOR DISSOLUTION OF MARRIAGE

A protective order in a suit for dissolution of a marriage must be in a separate document entitled "PROTECTIVE ORDER."

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.005. AGREED ORDER

(a) To facilitate settlement, the parties to a proceeding may agree in writing to the terms of a protective order as provided by Section 85.021. An agreement under this subsection is subject to the approval of the court.

(b) To facilitate settlement, a respondent may agree in writing to the terms of a protective order as provided by Section 85.022, subject to the approval of the court. The court may not approve an agreement that requires the applicant to do or refrain from doing an act under Section 85.022. The agreed order is enforceable civilly or criminally.

(c) If the court approves an agreement between the parties, the court shall render an agreed protective order that is in the best interest of the applicant, the family or household, or a member of the family or household.

(d) An agreed protective order is not enforceable as a contract.

(e) An agreed protective order expires on the date the court order expires.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by: Acts 2005, 79th Leg., Ch. 541 (H.B. 1059), Sec. 1, eff. June 17, 2005.

COMMENTS

In 2017, the El Paso court of appeals discussed whether an agreed protective order required specific findings regarding family violence to be enforceable. Although the court of appeals did not resolve this question of statutory construction (as appellant's argument failed on more fundamental ground), Chief Justice Ann McClure specifically noted that the majority did not believe that such specific findings were required and that the lack of findings would not make an agreed protective order void. According to the majority, "a person might agree to the remedies available under Section 85.022 without admitting to the predicates necessary for a judge to involuntarily impose those same remedies." *See Perez v. State*, No. 08-15-00253-CR, 2017 WL 1955338, at *2 (Tex. App.—El Paso May 11, 2017, pet. ref'd).

ANNOTATIONS

Perez v. State, No. 08-15-00253-CR, 2017 WL 1955338 (Tex. App.—El Paso May 11, 2017, pet. ref'd). If an agreed protective order was improperly approved by the trial court because it lacked family violence findings, this error would make the order voidable, not void. Alleged statutory or procedural error makes an order voidable rather than void.

In re I.E.W., No. 13-09-00216-CV, 2010 WL 3418276 (Tex. App.—Corpus Christi Aug. 27, 2010, no pet.) (mem. op.). A respondent who agreed to a temporary protective order which did not find that the respondent had committed family violence and was likely to commit family violence in the future did not consent to those implied findings. Further, it is reversible error for a trial court to deny a motion to vacate an agreed protective order which essentially forbade any contact between one parent and the child because the restrictions on contact exceeded that which was necessary to protect the child's best interest.

Sec. 85.006. DEFAULT ORDER

(a) A court may render a protective order that is binding on a respondent who does not attend a hearing if the respondent received service of the application and notice of the hearing.

(b) If the court reschedules the hearing under Chapter 84, a protective order may be rendered if the respondent does not attend the rescheduled hearing.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.007. CONFIDENTIALITY OF CERTAIN INFORMATION

(a) On request by a person protected by an order or member of the family or household of a person protected by an order, the court may exclude from a protective order the address and telephone number of:

(1) a person protected by the order, in which case the order shall state the county in which the person resides;

(2) the place of employment or business of a person protected by the order; or

(3) the child-care facility or school a child protected by the order attends or in which the child resides.

(b) On granting a request for confidentiality under this section, the court shall order the clerk to:

(1) strike the information described by Subsection (a) from the public records of the court; and

(2) maintain a confidential record of the information for use only by:

(A) the court; or

(B) a law enforcement agency for purposes of entering the information required by Section 411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 91, Sec. 7, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., Ch. 422 (S.B. 1242), Sec. 3, eff. Sept. 1, 2017.

Sec. 85.009. ORDER VALID UNTIL SUPERSEDED

A protective order rendered under this chapter is valid and enforceable pending further action by the court that rendered the order until the order is properly superseded by another court with jurisdiction over the order.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

SUBCHAPTER B. CONTENTS OF PROTECTIVE ORDER

Sec. 85.021. REQUIREMENTS OF ORDER APPLYING TO ANY PARTY

In a protective order, the court may:

(1) prohibit a party from:

(A) removing a child who is a member of the family or household from:

(i) the possession of a person named in the order; or

(ii) the jurisdiction of the court;

(B) transferring, encumbering, or otherwise disposing of property, other than in the ordinary course of business, that is mutually owned or leased by the parties; or

(C) removing a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code, from the possession or actual or constructive care of a person named in the order;

(2) grant exclusive possession of a residence to a party and, if appropriate, direct one or more parties to vacate the residence if the residence:

(A) is jointly owned or leased by the party receiving exclusive possession and a party being denied possession;

(B) is owned or leased by the party retaining possession; or

(C) is owned or leased by the party being denied possession and that party has an obligation to support the party or a child of the party granted possession of the residence;

(3) provide for the possession of and access to a child of a party if the person receiving possession of or access to the child is a parent of the child;

(4) require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child; or

(5) award to a party the use and possession of specified property that is community property or jointly owned or leased property.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 136 (S.B. 279), Sec. 1, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 543 (S.B. 555), Sec. 1, eff. September 1, 2013.

ANNOTATIONS

Martin v. Martin, 545 S.W.3d 162 (Tex. App.—El Paso 2017, no pet.). Although evidence was insufficient to establish prior family violence or future family violence against the children, trial court appropriately included prohibitions against ex-husband from contacting the children because of violence committed against ex-wife as children were household members of ex-wife.

Sec. 85.022. REQUIREMENTS OF ORDER APPLYING TO PERSON WHO COMMITTED FAMILY VIOLENCE

(a) In a protective order, the court may order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence and may order that person to:

(1) complete a battering intervention and prevention program accredited under Article 42.141, Code of Criminal Procedure;

(2) beginning on September 1, 2008, if the referral option under Subdivision (1) is not available, complete a program or counsel with a provider that has begun the accreditation process described by Subsection (a–1); or

(3) if the referral option under Subdivision (1) or, beginning on September 1, 2008, the referral option under Subdivision (2) is not available, counsel with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor who has completed family violence intervention training that the community justice assistance division of the Texas Department of Criminal Justice has approved, after consultation with the licensing authorities described by Chapters 152, 501, 502, 503, and 505, Occupations Code, and experts in the field of family violence.

(a–1) Beginning on September 1, 2009, a program or provider serving as a referral option for the courts under Subsection (a)(1) or (2) must be accredited under Section 4A, Article 42.141, Code of Criminal Procedure, as conforming to program guidelines under that article.

(b) In a protective order, the court may prohibit the person found to have committed family violence from:

(1) committing family violence;

(2) communicating:

(A) directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;

(B) a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and

(C) if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;

(3) going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;

(4) going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides;

(5) engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person;

(6) possessing a firearm, unless the person is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision; and

(7) harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code, that is possessed by or is in the actual or constructive care of a person protected by an order or by a member of the family or household of a person protected by an order.

(c) In an order under Subsection (b)(3) or (4), the court shall specifically describe each prohibited location and the minimum distances from the location, if any, that the party must maintain. This subsection does not apply to an order in which Section 85.007 applies.

(d) In a protective order, the court shall suspend a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code, that is held by a person found to have committed family violence.

(e) In this section, "firearm" has the meaning assigned by Section 46.01, Penal Code.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1412, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 91, Sec. 8, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 23, Sec. 3, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 113 (S.B. 44), Sec. 4, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 11.21, eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. 136 (S.B. 279), Sec. 2, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 543 (S.B. 555), Sec. 2, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 12, eff. January 1, 2016.

COMMENTS

In 2011, the Texas legislature amended this section, and amended it again in 2013, so that subsection 85.022(b)(7) now allows a protective order to forbid "harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal, as defined by section 121.002, Human Resources Code, that is possessed by or is in the actual or constructive care of a person protected by an order or by a member of the family or household of a person protected by an order."

Section 925(a)(1) of title 18 of the United States Code provides that "provisions of this chapter, except for sections 922(d)(9) [conviction of misdemeanor crime of domestic violence precluding purchase] and 922(g)(9) [conviction of misdemeanor crime of domestic violence precluding possession] and the provisions relating to firearms subject to the prohibitions of section 922(p) [prohibiting firearms which are not detectable by airport security] shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any state or any department, agency, or political subdivision thereof." Thus, unless convicted of the misdemeanor crime of domestic violence, peace officers would be entitled to possess a firearm that was "imported for, sold or shipped to, or issued for the use of" his department. This would even appear to allow a peace officer to possess a firearm while he was the subject of a protective order, at least with respect to his issued weapon while on duty.

ANNOTATIONS

Hancock v. Worbington, No. 14-15-00964-CV, 2017 WL 1181308 (Tex. App.—Houston [14th Dist.] Mar. 30, 2017, no pet.) (mem. op.). The trial court found that the complainant violated a protective order by showing up at the victim's place of employment. The protective order did not list an address for the place of employment, but the trial court relied on the victim's testimony that complainant knew where victim worked, and this was found to be sufficient to uphold the violation of the protective order.

In re I.E.W., No. 13-09-00216-CV, 2010 WL 3418276 (Tex. App.—Corpus Christi Aug. 27, 2010, no pet.) (mem. op.). Relying on Tex. Fam. Code § 153.193, the court of appeals struck provisions in a protective order that forbade any contact between the respondent and his daughter because that restriction far exceeded that which was required to protect the child's best interest.

Dukes v. State, 239 S.W.3d 444 (Tex. App.—Dallas 2007, pet. ref'd). A protective order that misstated the applicant's residential address (extra digit in house number) nevertheless "specifically described" the residence: "The focus of the statutory provisions is not the protection of a location's land and fixtures; the focus is the protection of the property's use as the residence of a protected person."

In re M.G.M., 163 S.W.3d 191 (Tex. App.—Beaumont 2005, no pet.). A trial court exceeded its emergency jurisdiction under Tex. Fam. Code § 152.204(a) by including provisions in a protective order relating to use of property, payment of child support, and attendance at a batterer's course when divorce proceedings were pending in the children's home state of Michigan.

Scott v. State ex rel. Tabler, No. 12-04-00041-CV, 2005 WL 1315625 (Tex. App.—Tyler May 31, 2005, no pet.) (mem. op.). Subsection 85.022(b)(3) permits a protective order forbidding a respondent from going to or near the residence of a person protected by a protective order even when the respondent owns the residence and the applicant has not returned to the residence because she is still hospitalized from being beaten by the respondent.

Collins v. State, 955 S.W.2d 464 (Tex. App.—Fort Worth 1997, no pet.) (per curiam). Subsection 85.022(c) requires a court to describe specifically the prohibited locations and the minimum distances therefrom, "if any." Accordingly, the subsection requires a court to set out a distance only "if there is one."

RESOURCES

Frederick S. Adams, Jr. & Hunter Lewis, *Civil and Criminal Ramifications of a Family Violence Protective Order*, Adv. Fam. L. (2010).

Frederick S. Adams, Jr., *Firearms and Gun Trusts*, Adv. Fam. L. (2018).

Sec. 85.023. EFFECT ON PROPERTY RIGHTS

A protective order or an agreement approved by the court under this subtitle does not affect the title to real property.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

Scott v. State ex rel. Tabler, No. 12-04-00041-CV, 2005 WL 1315625 (Tex. App.—Tyler May 31, 2005, no pet.) (mem. op.). A court of appeals upheld a trial court's issuance of a protective order that forbade a respondent from going to or near a residence that he owned.

Sec. 85.024. ENFORCEMENT OF COUNSELING REQUIREMENT

(a) A person found to have engaged in family violence who is ordered to attend a program or counseling under Section 85.022(a)(1), (2), or (3) shall file with the court an affidavit before the 60th day after the date the order was rendered stating either that the person has begun the program or counseling or that a program or counseling is not available within a reasonable distance from the person's residence. A person who files an affidavit that the person has begun the program or counseling shall file

with the court before the date the protective order expires a statement that the person completed the program or counseling not later than the 30th day before the expiration date of the protective order or the 30th day before the first anniversary of the date the protective order was issued, whichever date is earlier. An affidavit under this subsection must be accompanied by a letter, notice, or certificate from the program or counselor that verifies the person's completion of the program or counseling. A person who fails to comply with this subsection may be punished for contempt of court under Section 21.002, Government Code.

(b) A protective order under Section 85.022 must specifically advise the person subject to the order of the requirement of this section and the possible punishment if the person fails to comply with the requirement.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 15, eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 113 (S.B. 44), Sec. 5, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 770 (H.B. 3593), Sec. 1, eff. September 1, 2007.

Sec. 85.025. DURATION OF PROTECTIVE ORDER

(a) Except as otherwise provided by this section, an order under this subtitle is effective:

(1) for the period stated in the order, not to exceed two years; or

(2) if a period is not stated in the order, until the second anniversary of the date the order was issued.

(a–1) The court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court finds that the person who is the subject of the protective order:

(1) committed an act constituting a felony offense involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense;

(2) caused serious bodily injury to the applicant or a member of the applicant's family or household; or

(3) was the subject of two or more previous protective orders rendered:

(A) to protect the person on whose behalf the current protective order is sought; and

(B) after a finding by the court that the subject of the protective order:

(i) has committed family violence; and

(ii) is likely to commit family violence in the future.

(b) A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order.

(b–1) Following the filing of a motion under Subsection (b), a person who is the subject of a protective order issued under Subsection (a–1) that is effective for a period that exceeds two years may file not more than one subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order. The subsequent motion may not be filed earlier than the first anniversary of the date on which the court rendered an order on the previous motion by the person.

(b–2) After a hearing on a motion under Subsection (b) or (b–1), if the court does not make a finding that there is no continuing need for the protective order, the protective order remains in effect until the

date the order expires under this section. Evidence of the movant's compliance with the protective order does not by itself support a finding by the court that there is no continuing need for the protective order. If the court finds there is no continuing need for the protective order, the court shall order that the protective order expires on a date set by the court.

(b–3) Subsection (b) does not apply to a protective order issued under **Subchapter A**, Chapter **7B** ~~7A~~, Code of Criminal Procedure.

(c) If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a) or (a–1), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, the period for which the order is effective is extended, and the order expires on:

(1) the first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or

(2) the second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1999, 76th Leg., ch. 1160, Sec. 3, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 627 (S.B. 789), Sec. 2, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 336 (H.B. 388), Sec. 1, eff. June 9, 2015; Acts 2017, 85th Leg., R.S., Ch. 64 (S.B. 712), Sec. 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., Ch. 97 (S.B. 257), Sec. 1, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 4173, Sec. 2.35, eff. Jan. 1, 2021.

ANNOTATIONS

L.S. v. Shawn, No. 13-17-00224-CV, 2018 WL 4100857 (Tex. App.—Corpus Christi Aug. 18, 2018, no pet.) (mem. op.). Subsection 85.025(b), which allows a person to challenge the "continuing need" for a family protective order, does not apply to criminal protective orders.

Molinar v. S.M., No. 08-15-00083-CV, 2017 WL 511888 (Tex. App.—El Paso Feb. 8, 2017, pet. denied). The provisions of the Code of Criminal Procedure governing rescinding protective orders issued on sexual assault grounds apply equally to agreed protective orders, even if the order contains no findings of the same.

R.M. v. Swearingen, 510 S.W.3d 630 (Tex. App.—El Paso 2016, no pet.). If a protective order is issued on sexual abuse grounds, only a victim can petition to have the order rescinded. Tex. Code Crim. Proc. art. 7A.07(d) specifically references and supersedes section 85.025.

In re I.E.W., No. 13-09-00216-CV, 2010 WL 3418276 (Tex. App.—Corpus Christi Aug. 27, 2010, no pet.) (mem. op.). The fact that a respondent has not violated a protective order or engaged in any other inappropriate behavior is not evidence that there is no continuing need for the protective order because, absent the protective order, the respondent might have engaged in acts forbidden by the protective order.

Banargent v. Brent, No. 14-05-00574-CV, 2006 WL 462268 (Tex. App.—Houston [14th Dist.] Feb. 28, 2006, no pet.) (mem. op.). A life sentence for family violence assault does not rule out that family violence is likely to occur in the future, so the trial court did not err when it signed a protective order for the victim of the assault. Also, should the respondent be released from prison, subsection 85.025(c) would protect the victim by automatically extending the expiration date of the protective order to one year after the date of the respondent's release from prison.

Sec. 85.026. WARNING ON PROTECTIVE ORDER

(a) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statements in boldfaced type, capital letters, or underlined:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION."

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 632, Sec. 6(2), eff. September 1, 2011.

(c) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1999, 76th Leg., ch. 178, Sec. 3, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1160, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 23, Sec. 5, eff. Sept. 1; 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 632 (S.B. 819), Sec. 5, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 632 (S.B. 819), Sec. 6(2), eff. September 1, 2011.

SUBCHAPTER C. DELIVERY OF PROTECTIVE ORDER

Sec. 85.041. DELIVERY TO RESPONDENT

(a) A protective order rendered under this subtitle shall be:

(1) delivered to the respondent as provided by Rule 21a, Texas Rules of Civil Procedure;

(2) served in the same manner as a writ of injunction; or

(3) served in open court at the close of the hearing as provided by this section.

(b) The court shall serve an order in open court to a respondent who is present at the hearing by giving to the respondent a copy of the order, reduced to writing and signed by the judge or master. A certified copy of the signed order shall be given to the applicant at the time the order is given to the respondent. If the applicant is not in court at the conclusion of the hearing, the clerk of the court shall mail a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

(c) If the order has not been reduced to writing, the court shall give notice orally to a respondent who is present at the hearing of the part of the order that contains prohibitions under Section 85.022 or any other part of the order that contains provisions necessary to prevent further family violence. The clerk of the court shall mail a copy of the order to the respondent and a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

(d) If the respondent is not present at the hearing and the order has been reduced to writing at the conclusion of the hearing, the clerk of the court shall immediately provide a certified copy of the order to the applicant and mail a copy of the order to the respondent not later than the third business day after the date the hearing is concluded.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.042. DELIVERY OF ORDER TO OTHER PERSONS

(a) Not later than the next business day after the date the court issues an original or modified protective order under this subtitle, the clerk of the court shall send a copy of the order, along with the information provided by the applicant or the applicant's attorney that is required under Section 411.042(b)(6), Government Code, to:

(1) the chief of police of the municipality in which the person protected by the order resides, if the person resides in a municipality;

(2) the appropriate constable and the sheriff of the county in which the person resides, if the person does not reside in a municipality; and

(3) the Title IV-D agency, if the application for the protective order indicates that the applicant is receiving services from the Title IV-D agency.

(a–1) This subsection applies only if the respondent, at the time of issuance of an original or modified protective order under this subtitle, is a member of the state military forces or is serving in the armed forces of the United States in an active-duty status and the applicant or the applicant's attorney provides to the clerk of the court the mailing address of the staff judge advocate or provost marshal, as applicable. In addition to complying with Subsection (a), the clerk of the court shall also provide a copy of the protective order and the information described by that subsection to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the respondent is assigned with the intent that the commanding officer will be notified, as applicable.

(b) If a protective order made under this chapter prohibits a respondent from going to or near a child-care facility or school, the clerk of the court shall send a copy of the order to the child-care facility or school.

(c) The clerk of a court that vacates an original or modified protective order under this subtitle shall notify each individual or entity who received a copy of the original or modified order from the clerk under this section that the order is vacated.

(d) The applicant or the applicant's attorney shall provide to the clerk of the court:

(1) the name and address of each law enforcement agency, child-care facility, school, and other individual or entity to which the clerk is required to send a copy of the order under this section; and

(2) any other information required under Section 411.042(b)(6), Government Code.

(e) The clerk of the court issuing an original or modified protective order under Section 85.022 that suspends a license to carry a handgun shall send a copy of the order to the appropriate division of

the Department of Public Safety at its Austin headquarters. On receipt of the order suspending the license, the department shall:

(1) record the suspension of the license in the records of the department;

(2) report the suspension to local law enforcement agencies, as appropriate; and

(3) demand surrender of the suspended license from the license holder.

(f) A clerk of the court may transmit the order and any related information electronically or in another manner that can be accessed by the recipient.

(g) A clerk of the court may delay sending a copy of the order under Subsection (a) only if the clerk lacks information necessary to ensure service and enforcement.

(h) In this section, "business day" means a day other than a Saturday, Sunday, or state or national holiday.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 614, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1412, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 91, Sec. 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 35, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 91, Sec. 9, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 327 (H.B. 2624), Sec. 1, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 4, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 1276 (H.B. 1435), Sec. 3, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 243 (S.B. 737), Sec. 3, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 13, eff. January 1, 2016.

RESOURCES

Frederick S. Adams, Jr. & Hunter Lewis, *Civil and Criminal Ramifications of a Family Violence Protective Order*, Adv. Fam. L. (2010).

SUBCHAPTER D. RELATIONSHIP BETWEEN PROTECTIVE ORDER AND SUIT FOR DISSOLUTION OF MARRIAGE AND SUIT AFFECTING PARENT-CHILD RELATIONSHIP

Sec. 85.061. DISMISSAL OF APPLICATION PROHIBITED; SUBSEQUENTLY FILED SUIT FOR DISSOLUTION OF MARRIAGE OR SUIT AFFECTING PARENT-CHILD RELATIONSHIP

If an application for a protective order is pending, a court may not dismiss the application or delay a hearing on the application on the grounds that a suit for dissolution of marriage or suit affecting the parent-child relationship is filed after the date the application was filed.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997.

Sec. 85.062. APPLICATION FILED WHILE SUIT FOR DISSOLUTION OF MARRIAGE OR SUIT AFFECTING PARENT-CHILD RELATIONSHIP PENDING

(a) If a suit for dissolution of a marriage or suit affecting the parent-child relationship is pending, a party to the suit may apply for a protective order against another party to the suit by filing an application:

(1) in the court in which the suit is pending; or

(2) in a court in the county in which the applicant resides if the applicant resides outside the jurisdiction of the court in which the suit is pending.

(b) An applicant subject to this section shall inform the clerk of the court that renders a protective order that a suit for dissolution of a marriage or a suit affecting the parent-child relationship is pending in which the applicant is party.

(c) If a final protective order is rendered by a court other than the court in which a suit for dissolution of a marriage or a suit affecting the parent-child relationship is pending, the clerk of the court that rendered the protective order shall:

(1) inform the clerk of the court in which the suit is pending that a final protective order has been rendered; and

(2) forward a copy of the final protective order to the court in which the suit is pending.

(d) A protective order rendered by a court in which an application is filed under Subsection (a)(2) is subject to transfer under Section 85.064.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997.

Sec. 85.063. APPLICATION FILED AFTER FINAL ORDER RENDERED IN SUIT FOR DISSOLUTION OF MARRIAGE OR SUIT AFFECTING PARENT-CHILD RELATIONSHIP

(a) If a final order has been rendered in a suit for dissolution of marriage or suit affecting the parent-child relationship, an application for a protective order by a party to the suit against another party to the suit filed after the date the final order was rendered, and that is:

(1) filed in the county in which the final order was rendered, shall be filed in the court that rendered the final order; and

(2) filed in another county, shall be filed in a court having jurisdiction to render a protective order under this subtitle.

(b) A protective order rendered by a court in which an application is filed under Subsection (a)(2) is subject to transfer under Section 85.064.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997.

ANNOTATIONS

Cooke v. Cooke, 65 S.W.3d 785 (Tex. App.—Dallas 2001, no pet.). Although section 85.063(a)(1) requires applications for protective orders involving parties to a prior divorce action to be filed in the court that rendered the final divorce decree, the statute does not prohibit transfer or reassignment of the case or require that the protective order application be heard and ruled upon by the divorce court.

Sec. 85.064. TRANSFER OF PROTECTIVE ORDER

(a) If a protective order was rendered before the filing of a suit for dissolution of marriage or suit affecting the parent-child relationship or while the suit is pending as provided by Section 85.062, the court that rendered the order may, on the motion of a party or on the court's own motion, transfer the protective order to the court having jurisdiction of the suit if the court makes the finding prescribed by Subsection (c).

(b) If a protective order that affects a party's right to possession of or access to a child is rendered after the date a final order was rendered in a suit affecting the parent-child relationship, on the motion of a party or on the court's own motion, the court may transfer the protective order to the court of continuing, exclusive jurisdiction if the court makes the finding prescribed by Subsection (c).

(c) A court may transfer a protective order under this section if the court finds that the transfer is:

(1) in the interest of justice; or

(2) for the safety or convenience of a party or witness.

(d) The transfer of a protective order under this section shall be conducted according to the procedures provided by Section 155.207.

(e) Except as provided by Section 81.002, the fees or costs associated with the transfer of a protective order shall be paid by the movant.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997.

ANNOTATIONS

Brownlee v. Daniel, No. 06-11-00136-CV (Tex. App.—Texarkana July 25, 2012, no pet.) (mem. op.). A postdivorce protective order signed by a court other than the court that divorced the parties should yield to the decrees of the court of continuing, exclusive jurisdiction upon transfer to such court.

Sec. 85.065. EFFECT OF TRANSFER

(a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 632, Sec. 6(3), eff. September 1, 2011.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 632, Sec. 6(3), eff. September 1, 2011.

(c) A protective order that is transferred is subject to modification by the court that receives the order to the same extent modification is permitted under Chapter 87 by a court that rendered the order.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 632 (S.B. 819), Sec. 6(3), eff. September 1, 2011.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

CHAPTER 86. LAW ENFORCEMENT DUTIES RELATING TO PROTECTIVE ORDERS

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Sec. 86.001. ADOPTION OF PROCEDURES BY LAW ENFORCEMENT AGENCY

(a) To ensure that law enforcement officers responding to calls are aware of the existence and terms of protective orders issued under this subtitle, each law enforcement agency shall establish procedures in the agency to provide adequate information or access to information for law enforcement officers of the names of each person protected by an order issued under this subtitle and of each person against whom protective orders are directed.

(b) A law enforcement agency may enter a protective order in the agency's computer records of outstanding warrants as notice that the order has been issued and is currently in effect. On receipt of notification by a clerk of court that the court has vacated or dismissed an order, the law enforcement agency shall remove the order from the agency's computer record of outstanding warrants.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 86.0011. DUTY TO ENTER INFORMATION INTO STATEWIDE LAW ENFORCEMENT INFORMATION SYSTEM

(a) On receipt of an original or modified protective order from the clerk of the issuing court, a law enforcement agency shall immediately, but not later than the third business day after the date the order is received, enter the information required by Section 411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety.

(b) In this section, "business day" means a day other than a Saturday, Sunday, or state or national holiday.

Added by Acts 2001, 77th Leg., ch. 35, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 243 (S.B. 737), Sec. 4, eff. September 1, 2015.

Sec. 86.002. DUTY TO PROVIDE INFORMATION TO FIREARMS DEALERS

(a) On receipt of a request for a law enforcement information system record check of a prospective transferee by a licensed firearms dealer under the Brady Handgun Violence Prevention Act, 18 U.S.C. Section 922, the chief law enforcement officer shall determine whether the Department of Public Safety has in the department's law enforcement information system a record indicating the existence of an active protective order directed to the prospective transferee.

(b) If the department's law enforcement information system indicates the existence of an active protective order directed to the prospective transferee, the chief law enforcement officer shall immediately advise the dealer that the transfer is prohibited.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 86.003. COURT ORDER FOR LAW ENFORCEMENT ASSISTANCE UNDER TEMPORARY ORDER

On request by an applicant obtaining a temporary ex parte protective order that excludes the respondent from the respondent's residence, the court granting the temporary order shall render a written order to the sheriff, constable, or chief of police to provide a law enforcement officer from the department of the chief of police, constable, or sheriff to:

(1) accompany the applicant to the residence covered by the order;

(2) inform the respondent that the court has ordered that the respondent be excluded from the residence;

(3) protect the applicant while the applicant takes possession of the residence; and

(4) protect the applicant if the respondent refuses to vacate the residence while the applicant takes possession of the applicant's necessary personal property.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 852, Sec. 1, eff. June 18. 1997.

Sec. 86.004. COURT ORDER FOR LAW ENFORCEMENT ASSISTANCE UNDER FINAL ORDER

On request by an applicant obtaining a final protective order that excludes the respondent from the respondent's residence, the court granting the final order shall render a written order to the sheriff, constable, or chief of police to provide a law enforcement officer from the department of the chief of police, constable, or sheriff to:

(1) accompany the applicant to the residence covered by the order;

(2) inform the respondent that the court has ordered that the respondent be excluded from the residence;

(3) protect the applicant while the applicant takes possession of the residence and the respondent takes possession of the respondent's necessary personal property; and

(4) if the respondent refuses to vacate the residence:

(A) remove the respondent from the residence; and

(B) arrest the respondent for violating the court order.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 852, Sec. 2, eff. June 18, 1997.

Sec. 86.005. PROTECTIVE ORDER FROM ANOTHER JURISDICTION

To ensure that law enforcement officers responding to calls are aware of the existence and terms of a protective order from another jurisdiction, each law enforcement agency shall establish procedures in the agency to provide adequate information or access to information for law enforcement officers regarding the name of each person protected by an order rendered in another jurisdiction and of each person against whom the protective order is directed.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 17, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 48, Sec. 1, eff. Sept. 1, 2001.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

CHAPTER 87. MODIFICATION OF PROTECTIVE ORDERS

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Sec. 87.001. MODIFICATION OF PROTECTIVE ORDER

On the motion of any party, the court, after notice and hearing, may modify an existing protective order to:

(1) exclude any item included in the order; or

(2) include any item that could have been included in the order.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

ANNOTATIONS

Culver v. Culver, 360 S.W.3d 526 (Tex. App.—Texarkana 2011, no pet.). The trial court granted a "standard protective order," and a boilerplate form was signed by the court with all the boxes left unchecked other than the one prohibiting possession of firearms. The district attorney filed motion for judgment nunc pro tunc, and the court modified the order to include all of the standard language, with additional language prohibiting the wife from going within two hundred yards from husband's residence or workplace. Since the judgment did not include new substantive changes based on new evidence of changed conditions, but a modification of the protective order within the plenary power of the trial court based on the original evidence and hearing, it need not comply with section 87.003. *See also L.S. v. Shawn*, No. 13-17-00224-CV, 2018 WL 4100857 (Tex. App.—Corpus Christi Aug. 29, 2018, no pet.) (mem. op.).

In re S.S., 217 S.W.3d 685 (Tex. App.—Eastland 2007, no pet.). During the effective period of a protective order, a trial court retains the power to modify the protective order by adding to or deleting items from it, including the power to award the applicant attorney's fees incurred by the applicant because of the respondent's unsuccessful appeal of the protective order.

Sec. 87.002. MODIFICATION MAY NOT EXTEND DURATION OF ORDER

A protective order may not be modified to extend the period of the order's validity beyond the second anniversary of the date the original order was rendered or beyond the date the order expires under Section 85.025(a–1) or (c), whichever date occurs later.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997. Amended by Acts 1999, 76th Leg., ch. 1160, Sec. 5, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 627 (S.B. 789), Sec. 3, eff. September 1, 2011.

Sec. 87.003. NOTIFICATION OF MOTION TO MODIFY

Notice of a motion to modify a protective order is sufficient if delivery of the motion is attempted on the respondent at the respondent's last known address by registered or certified mail as provided by Rule 21a, Texas Rules of Civil Procedure.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 87.004. CHANGE OF ADDRESS OR TELEPHONE NUMBER

(a) If a protective order contains the address or telephone number of a person protected by the order, of the place of employment or business of the person, or of the child-care facility or school of a child protected by the order and that information is not confidential under Section 85.007, the person protected by the order may file a notification of change of address or telephone number with the court that rendered the order to modify the information contained in the order.

(b) The clerk of the court shall attach the notification of change to the protective order and shall deliver a copy of the notification to the respondent by registered or certified mail as provided by Rule 21a, Texas Rules of Civil Procedure.

(c) The filing of a notification of change of address or telephone number and the attachment of the notification to a protective order does not affect the validity of the order.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 18, eff. Sept. 1, 1997.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

CHAPTER 88. UNIFORM INTERSTATE ENFORCEMENT OF PROTECTIVE ORDERS ACT

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COMMENTS

This chapter includes Texas's version of the Interstate Enforcement of Domestic Violence Protection Orders Act that was drafted by the Uniform Law Commission of the National Conference of Commissioners on Uniform State Laws.

Sec. 88.001. SHORT TITLE

This chapter may be cited as the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Added by Acts 2001, 77th Leg., ch. 48, Sec. 2, eff. Sept. 1, 2001.

Sec. 88.002. DEFINITIONS

In this chapter:

(1) "Foreign protective order" means a protective order issued by a tribunal of another state.

(2) "Issuing state" means the state in which a tribunal issues a protective order.

(3) "Mutual foreign protective order" means a foreign protective order that includes provisions issued in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) "Protected individual" means an individual protected by a protective order.

(5) "Protective order" means an injunction or other order, issued by a tribunal under the domestic violence or family violence laws or another law of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassing, contacting or communicating with, or being in physical proximity to another individual.

(6) "Respondent" means the individual against whom enforcement of a protective order is sought.

(7) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or a territory or insular possession subject to the jurisdiction of the United States. The term includes a military tribunal of the United States, an Indian tribe or band, and an Alaskan native village that has jurisdiction to issue protective orders.

(8) "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protective order.

Added by Acts 2001, 77th Leg., ch. 48, Sec. 2, eff. Sept. 1, 2001.

Sec. 88.003. JUDICIAL ENFORCEMENT OF ORDER

(a) A tribunal of this state shall enforce the terms of a foreign protective order, including a term that provides relief that a tribunal of this state would not have power to provide but for this section. The tribunal shall enforce the order regardless of whether the order was obtained by independent action or in another proceeding, if the order is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protective order, the tribunal shall follow the procedures of this state for the enforcement of protective orders.

(b) A tribunal of this state shall enforce the provisions of the foreign protective order that govern the possession of and access to a child if the provisions were issued in accordance with the jurisdictional requirements governing the issuance of possession and access orders in the issuing state.

(c) A tribunal of this state may enforce a provision of the foreign protective order relating to child support if the order was issued in accordance with the jurisdictional requirements of Chapter 159 and the federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. Section 1738B, as amended.

(d) A foreign protective order is valid if the order:

(1) names the protected individual and the respondent;

(2) is currently in effect;

(3) was rendered by a tribunal that had jurisdiction over the parties and the subject matter under the law of the issuing state; and

(4) was rendered after the respondent was given reasonable notice and an opportunity to be heard consistent with the right to due process, either:

(A) before the tribunal issued the order; or

(B) in the case of an ex parte order, within a reasonable time after the order was rendered.

(e) A protected individual seeking enforcement of a foreign protective order establishes a prima facie case for its validity by presenting an order that is valid on its face.

(f) It is an affirmative defense in an action seeking enforcement of a foreign protective order that the order does not meet the requirements for a valid order under Subsection (d).

(g) A tribunal of this state may enforce the provisions of a mutual foreign protective order that favor a respondent only if:

(1) the respondent filed a written pleading seeking a protective order from the tribunal of the issuing state; and

(2) the tribunal of the issuing state made specific findings in favor of the respondent.

Added by Acts 2001, 77th Leg., ch. 48, Sec. 2, eff. Sept. 1, 2001.

COMMENTS

To ensure interstate enforcement of the protective order, the applicant should ask the trial court for a certificate stating that the protective order satisfied the requirements set forth in subsection 88.003(d): (1) the order names the protected person and the respondent; (2) the order is currently in effect; (3) the order was rendered by a court that had jurisdiction over the parties and the subject matter; and (4) the order was rendered after reasonable notice and opportunity to be heard. *See O'Connor's Texas Family Code Plus* (2018), p. 355, NCCUSL cmt. The sample certification form can also be found at **www.uniformlaws.org**.

Sec. 88.004. NONJUDICIAL ENFORCEMENT OF ORDER

(a) A law enforcement officer of this state, on determining that there is probable cause to believe that a valid foreign protective order exists and that the order has been violated, shall enforce the foreign protective order as if it were an order of a tribunal of this state. A law enforcement officer has probable cause to believe that a foreign protective order exists if the protected individual presents a foreign protective order that identifies both the protected individual and the respondent and on its face, is currently in effect.

(b) For the purposes of this section, a foreign protective order may be inscribed on a tangible medium or may be stored in an electronic or other medium if it is retrievable in a perceivable form. Presentation of a certified copy of a protective order is not required for enforcement.

(c) If a protected individual does not present a foreign protective order, a law enforcement officer may determine that there is probable cause to believe that a valid foreign protective order exists by relying on any relevant information.

(d) A law enforcement officer of this state who determines that an otherwise valid foreign protective order cannot be enforced because the respondent has not been notified or served with the order shall inform the respondent of the order and make a reasonable effort to serve the order on the respondent.

After informing the respondent and attempting to serve the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(e) The registration or filing of an order in this state is not required for the enforcement of a valid foreign protective order under this chapter.

Added by Acts 2001, 77th Leg., ch. 48, Sec. 2, eff. Sept. 1, 2001.

Sec. 88.005. REGISTRATION OF ORDER

(a) An individual may register a foreign protective order in this state. To register a foreign protective order, an individual shall:

(1) present a certified copy of the order to a sheriff, constable, or chief of police responsible for the registration of orders in the local computer records and in the statewide law enforcement system maintained by the Texas Department of Public Safety; or

(2) present a certified copy of the order to the Department of Public Safety and request that the order be registered in the statewide law enforcement system maintained by the Department of Public Safety.

(b) On receipt of a foreign protective order, the agency responsible for the registration of protective orders shall register the order in accordance with this section and furnish to the individual registering the order a certified copy of the registered order.

(c) The agency responsible for the registration of protective orders shall register a foreign protective order on presentation of a copy of a protective order that has been certified by the issuing state. A registered foreign protective order that is inaccurate or not currently in effect shall be corrected or removed from the registry in accordance with the law of this state.

(d) An individual registering a foreign protective order shall file an affidavit made by the protected individual that, to the best of the protected individual's knowledge, the order is in effect.

(e) A foreign protective order registered under this section may be entered in any existing state or federal registry of protective orders, in accordance with state or federal law.

(f) A fee may not be charged for the registration of a foreign protective order.

Added by Acts 2001, 77th Leg., ch. 48, Sec. 2, eff. Sept. 1, 2001.

Sec. 88.006. IMMUNITY

A state or local governmental agency, law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity is immune from civil and criminal liability for an act or omission arising from the registration or enforcement of a foreign protective order or the detention or arrest of a person alleged to have violated a foreign protective order if the act or omission was done in good faith in an effort to comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 48, Sec. 2, eff. Sept. 1, 2001.

Sec. 88.007. OTHER REMEDIES

A protected individual who pursues a remedy under this chapter is not precluded from pursuing other legal or equitable remedies against the respondent.

Added by Acts 2001, 77th Leg., ch. 48, Sec. 2, eff. Sept. 1, 2001.

Sec. 88.008. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Added by Acts 2001, 77th Leg., ch. 48, Sec. 2, eff. Sept. 1, 2001.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE C. FAMILY VIOLENCE REPORTING AND SERVICES

CHAPTER 91. REPORTING FAMILY VIOLENCE

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RESOURCES

Judy L. Warne, *Family Violence*, State Bar Col. Summer School (2017).

Sec. 91.001. DEFINITIONS

In this subtitle:

(1) "Family violence" has the meaning assigned by Section 71.004.

(2) "Medical professional" means a licensed doctor, nurse, physician assistant, or emergency medical technician.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 91.002. REPORTING BY WITNESSES ENCOURAGED

A person who witnesses family violence is encouraged to report the family violence to a local law enforcement agency.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 91.003. INFORMATION PROVIDED BY MEDICAL PROFESSIONALS

A medical professional who treats a person for injuries that the medical professional has reason to believe were caused by family violence shall:

(1) immediately provide the person with information regarding the nearest family violence shelter center;

(2) document in the person's medical file:

(A) the fact that the person has received the information provided under Subdivision (1); and

(B) the reasons for the medical professional's belief that the person's injuries were caused by family violence; and

(3) give the person a written notice in substantially the following form, completed with the required information, in both English and Spanish:

"It is a crime for any person to cause you any physical injury or harm even if that person is a member or former member of your family or household.

"NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE

"You may report family violence to a law enforcement officer by calling the following telephone numbers: _____.

"If you, your child, or any other household resident has been injured or if you feel you are going to be in danger after a law enforcement officer investigating family violence leaves your residence or at a later time, you have the right to:

"Ask the local prosecutor to file a criminal complaint against the person committing family violence; and

"Apply to a court for an order to protect you. You may want to consult with a legal aid office, a prosecuting attorney, or a private attorney. A court can enter an order that:

"(1) prohibits the abuser from committing further acts of violence;

"(2) prohibits the abuser from threatening, harassing, or contacting you at home;

"(3) directs the abuser to leave your household; and

"(4) establishes temporary custody of the children or any property.

"A VIOLATION OF CERTAIN PROVISIONS OF COURT-ORDERED PROTECTION MAY BE A FELONY.

"CALL THE FOLLOWING VIOLENCE SHELTERS OR SOCIAL ORGANIZATIONS IF YOU NEED PROTECTION: _____."

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 91.004. APPLICATION OF SUBTITLE

This subtitle does not affect a duty to report child abuse under Chapter 261.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE C. FAMILY VIOLENCE REPORTING AND SERVICES

CHAPTER 92. IMMUNITY

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Sec. 92.001. IMMUNITY

(a) Except as provided by Subsection (b), a person who reports family violence under Section 91.002 or provides information under Section 91.003 is immune from civil liability that might otherwise be incurred or imposed.

(b) A person who reports the person's own conduct or who otherwise reports family violence in bad faith is not protected from liability under this section.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE C. FAMILY VIOLENCE REPORTING AND SERVICES

CHAPTER 93. CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS

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Sec. 93.004. EXCEPTIONS 317

Sec. 93.001. DEFINITIONS

In this chapter:

(1) "Advocate" means a person who has at least 20 hours of training in assisting victims of family violence and is an employee or volunteer of a family violence center.

(2) "Family violence center" means a public or private nonprofit organization that provides, as its primary purpose, services to victims of family violence, including the services described by Section 51.005(b)(3), Human Resources Code.

(3) "Victim" has the meaning assigned to "victim of family violence" by Section 51.002, Human Resources Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1091 (H.B. 3649), Sec. 2, eff. Sept. 1, 2017.

Sec. 93.002. CONFIDENTIAL COMMUNICATIONS

A written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential and may not be disclosed.

Added by Acts 2017, 85th Leg., R.S., Ch. 1091 (H.B. 3649), Sec. 2, eff. Sept. 1, 2017.

Sec. 93.003. PRIVILEGED COMMUNICATIONS

(a) A victim has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication described by Section 93.002.

(b) The privilege may be claimed by:

(1) a victim or a victim's attorney on a victim's behalf;

(2) a parent, guardian, or conservator of a victim under 18 years of age; or

(3) an advocate or a family violence center on a victim's behalf.

Added by Acts 2017, 85th Leg., R.S., Ch. 1091 (H.B. 3649), Sec. 2, eff. Sept. 1, 2017.

Sec. 93.004. EXCEPTIONS

(a) A communication that is confidential under this chapter may be disclosed only:

(1) to another individual employed by or volunteering for a family violence center for the purpose of furthering the advocacy process;

(2) for the purpose of seeking evidence that is admissible under Article 38.49, Code of Criminal Procedure, following an in camera review and a determination that the communication is admissible under that article;

(3) to other persons in the context of a support group or group counseling in which a victim is a participant; or

(4) for the purposes of making a report under Chapter 261 of this code or Section 48.051, Human Resources Code.

(b) Notwithstanding Subsection (a), the Texas Rules of Evidence govern the disclosure of a communication that is confidential under this chapter in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication to form the basis of the expert's opinion.

(c) If the family violence center, at the request of the victim, discloses a communication privileged under this chapter for the purpose of a criminal or civil proceeding, the family violence center shall disclose the communication to all parties to that criminal or civil proceeding.

Added by Acts 2017, 85th Leg., R.S., Ch. 1091 (H.B. 3649), Sec. 2, eff. Sept. 1, 2017.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

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Sec. 101.001. APPLICABILITY OF DEFINITIONS

(a) Definitions in this subchapter apply to this title.

(b) If, in another part of this title, a term defined by this chapter has a meaning different from the meaning provided by this chapter, the meaning of that other provision prevails.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.0010. ACKNOWLEDGED FATHER

"Acknowledged father" means a man who has established a father-child relationship under Chapter 160.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 2.04, eff. June 14, 2001.

Sec. 101.0011. ADMINISTRATIVE WRIT OF WITHHOLDING

"Administrative writ of withholding" means the document issued by the Title IV-D agency or domestic relations office and delivered to an employer directing that earnings be withheld for payment of child support as provided by Chapter 158.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 5, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 199 (H.B. 1182), Sec. 1, eff. September 1, 2005.

Sec. 101.0015. ALLEGED FATHER

(a) "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.

(b) The term does not include:

(1) a presumed father;

(2) a man whose parental rights have been terminated or declared to not exist; or

(3) a male donor.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 2.04, eff. June 14, 2001.

ANNOTATIONS

In re H.C.S., 219 S.W.3d 33, 34 (Tex. App.—San Antonio 2006, no pet.). A husband who provides sperm to be used by his wife for assisted reproduction is not included in the definition of "donor."

Sec. 101.0017. AMICUS ATTORNEY

"Amicus attorney" has the meaning assigned by Section 107.001.

Added by Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 15, eff. September 1, 2005.

Sec. 101.0018. ATTORNEY AD LITEM

"Amicus ad litem" has the meaning assigned by Section 107.001.

Added by Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 15, eff. September 1, 2005.

Sec. 101.003. CHILD OR MINOR; ADULT

(a) "Child" or "minor" means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(b) In the context of child support, "child" includes a person over 18 years of age for whom a person may be obligated to pay child support.

(c) "Adult" means a person who is not a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re M.J.M.L., 31 S.W.3d 347, 351 (Tex. App.—San Antonio 2000, pet. denied). The statutory definition of "child" does not preclude a court from considering a course of conduct that endangers a child that occurred before and after a child's birth.

In re U.P., 105 S.W.3d 222, 234 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Harm to an unborn child is recognized when the child is born alive.

Sec. 101.004. CHILD SUPPORT AGENCY

"Child support agency" means:

(1) the Title IV-D agency;

(2) a county or district attorney or any other county officer or county agency that executes a cooperative agreement with the Title IV-D agency to provide child support services under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) and Chapter 231; or

(3) a domestic relations office.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.005. CHILD SUPPORT REVIEW OFFICER

"Child support review officer" means an individual designated and trained by a child support agency to conduct reviews under this title.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.01, eff. Sept. 1, 1995.

Sec. 101.006. CHILD SUPPORT SERVICES

"Child support services" means administrative or court actions to:

(1) establish paternity;

(2) establish, modify, or enforce child support, medical support, or dental support obligations;

(3) locate absent parents; or

(4) cooperate with other states in these actions and any other action authorized or required under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) or Chapter 231.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 2, eff. September 1, 2018.

Sec. 101.007. CLEAR AND CONVINCING EVIDENCE

"Clear and convincing evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re J.F.C., 96 S.W.3d 256, 265–67 (Tex. 2002). Evidence is legally and factually sufficient under the "clear and convincing" standard of proof if a reasonable trier of fact could have formed a firm belief or conviction that its finding was true from all the evidence admitted at trial. A reviewing court must view the evidence in the light most favorable to the trier of fact's finding, giving appropriate deference to the fact finder's resolution of disputed facts. However, the reviewing court may not disregard undisputed facts that do not support the finding.

In re G.M., 596 S.W.2d 846, 847 (Tex. 1980). The clear and convincing standard of proof is an intermediate standard, falling between the preponderance standard applicable in ordinary civil cases and the reasonable doubt standard applicable in criminal cases.

Sec. 101.008. COURT

"Court" means the district court, juvenile court having the same jurisdiction as a district court, or other court expressly given jurisdiction of a suit affecting the parent-child relationship.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.009. DANGER TO PHYSICAL HEALTH OR SAFETY OF CHILD

"Danger to the physical health or safety of a child" includes exposure of the child to loss or injury that jeopardizes the physical health or safety of the child without regard to whether there has been an actual prior injury to the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re E.C.R., 402 S.W.3d 239, 247 (Tex. 2013). Danger to the child's physical health or safety includes exposure of the child to loss or injury that jeopardizes the physical health or safety of the child without regard to whether there has been an actual prior injury to the child.

Sec. 101.0094. DENTAL INSURANCE

"Dental insurance" means insurance coverage that provides preventive dental care and other dental services, including usual dentist services, office visits, examinations, X-rays, and emergency services, that may be provided through a single service health maintenance organization or other private or public organization.

Added by Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 3, eff. September 1, 2018.

Sec. 101.0095. DENTAL SUPPORT

"Dental support" means periodic payments or a lump-sum payment made under an order to cover dental expenses, including dental insurance coverage, incurred for the benefit of a child.

Added by Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 3, eff. September 1, 2018.

Sec. 101.0096. DIGITIZED SIGNATURE

"Digitized signature" means a graphic image of a handwritten signature having the same legal force and effect for all purposes as a handwritten signature.

Added by Acts 2013, 83rd Leg., R.S., Ch. 790 (S.B. 1422), Sec. 1, eff. September 1, 2013.

Sec. 101.010. DISPOSABLE EARNINGS

"Disposable earnings" means the part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld, union dues, nondiscretionary retirement contributions, and medical, hospitalization, and disability insurance coverage for the obligor and the obligor's children.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.011. EARNINGS

"Earnings" means a payment to or due an individual, regardless of source and how denominated. The term includes a periodic or lump-sum payment for:

(1) wages, salary, compensation received as an independent contractor, overtime pay, severance pay, commission, bonus, and interest income;

(2) payments made under a pension, an annuity, workers' compensation, and a disability or retirement program; and

(3) unemployment benefits.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.012. EMPLOYER

"Employer" means a person, corporation, partnership, workers' compensation insurance carrier, governmental entity, the United States, or any other entity that pays or owes earnings to an individual. The term includes, for the purposes of enrolling dependents in a group health or dental insurance plan, a union, trade association, or other similar organization.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 4.02, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 2, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 4, eff. September 1, 2018.

Sec. 101.0125. FAMILY VIOLENCE

"Family violence" has the meaning assigned by Section 71.004.

Added by Acts 1999, 76th Leg., ch. 787, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.013. FILED

"Filed" means officially filed with the clerk of the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.0133. FOSTER CARE

"Foster care" means the placement of a child who is in the conservatorship of the Department of Family and Protective Services and in care outside the child's home in a residential child-care facility, including an agency foster home, specialized child-care home, cottage home operation, general residential operation, or another facility licensed or certified under Chapter 42, Human Resources Code, in which care is provided for 24 hours a day.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 7, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 4, eff. Sept. 1, 2017.

Sec. 101.0134. FOSTER CHILD

"Foster child" means a child who is in the managing conservatorship of the Department of Family and Protective Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 7, eff. September 1, 2015.

Sec. 101.014. GOVERNMENTAL ENTITY

"Governmental entity" means the state, a political subdivision of the state, or an agency of the state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.0145. GUARDIAN AD LITEM

"Guardian ad litem" has the meaning assigned by Section 107.001.

Added by Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 15, eff. September 1, 2005.

Sec. 101.015. HEALTH INSURANCE

"Health insurance" means insurance coverage that provides basic health care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services, that may be provided through a health maintenance organization or other private or public organization, other than medical assistance under Chapter 32, Human Resources Code.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 1, eff. Sept. 1, 2001.

Sec. 101.016. JOINT MANAGING CONSERVATORSHIP

"Joint managing conservatorship" means the sharing of the rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions may be awarded to one party.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.0161. JUDICIAL WRIT OF WITHHOLDING

"Judicial writ of withholding" means the document issued by the clerk of a court and delivered to an employer directing that earnings be withheld for payment of child support as provided by Chapter 158.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 5, eff. Sept. 1, 1997.

Sec. 101.017. LICENSED CHILD PLACING AGENCY

"Licensed child placing agency" means a person, including an organization or corporation, licensed or certified under Chapter 42, Human Resources Code, by the Department of Family and Protective Services to place a child in an adoptive home or a residential child-care facility, including a child-care facility, agency foster home, cottage home operation, or general residential operation.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 9, eff. May 21, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.028, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 5, eff. Sept. 1, 2017.

Sec. 101.018. LOCAL REGISTRY

"Local registry" means a county agency or public entity operated under the authority of a district clerk, county government, juvenile board, juvenile probation office, domestic relations office, or other county agency or public entity that serves a county or a court that has jurisdiction under this title and that:

(1) receives child support payments;

(2) maintains records of child support payments;

(3) distributes child support payments as required by law; and

(4) maintains custody of official child support payment records.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 740 (H.B. 2668), Sec. 1, eff. June 17, 2005.

Sec. 101.019. MANAGING CONSERVATORSHIP

"Managing conservatorship" means the relationship between a child and a managing conservator appointed by court order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.020. MEDICAL SUPPORT

"Medical support" means periodic payments or a lump-sum payment made under an order to cover medical expenses, including health insurance coverage, incurred for the benefit of a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 3, eff. Sept. 1, 1997.

Sec. 101.0201. NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING

"Notice of application for judicial writ of withholding" means the document delivered to an obligor and filed with the court as required by Chapter 158 for the nonjudicial determination of arrears and initiation of withholding.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 5, eff. Sept. 1, 1997.

Sec. 101.021. OBLIGEE

"Obligee" means a person or entity entitled to receive payments of child support, including an agency of this state or of another jurisdiction to which a person has assigned the person's right to support.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.022. OBLIGOR

"Obligor" means a person required to make payments under the terms of a support order for a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.023. ORDER

"Order" means a final order unless identified as a temporary order or the context clearly requires a different meaning. The term includes a decree and a judgment.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.024. PARENT

(a) "Parent" means the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father. Except as provided by Subsection (b), the term does not include a parent as to whom the parent-child relationship has been terminated.

(b) For purposes of establishing, determining the terms of, modifying, or enforcing an order, a reference in this title to a parent includes a person ordered to pay child support under Section 154.001(a–1) or to provide medical support or dental support for a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 821, Sec. 2.05, eff. June 14, 2001. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.03, eff. September 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 5, eff. September 1, 2018.

Sec. 101.025. PARENT-CHILD RELATIONSHIP

"Parent-child relationship" means the legal relationship between a child and the child's parents as provided by Chapter 160. The term includes the mother and child relationship and the father and child relationship.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 821, Sec. 2.06, eff. June 14, 2001.

Sec. 101.0255. RECORD

"Record" means information that is:

(1) inscribed on a tangible medium or stored in an electronic or other medium; and

(2) retrievable in a perceivable form.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 1, eff. September 1, 2007.

Sec. 101.026. RENDER

"Render" means the pronouncement by a judge of the court's ruling on a matter. The pronouncement may be made orally in the presence of the court reporter or in writing, including on the court's docket sheet or by a separate written instrument.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.027. PARENT LOCATOR SERVICE

"Parent locator service" means the service established under 42 U.S.C. Section 653.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.028. SCHOOL

"School" means an elementary or secondary school in which a child is enrolled or, if the child is not enrolled in an elementary or secondary school, the public school district in which the child primarily resides. For purposes of this section, a reference to elementary school includes prekindergarten.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1167 (S.B. 821), Sec. 2, eff. September 1, 2015.

Sec. 101.029. STANDARD POSSESSION ORDER

"Standard possession order" means an order that provides a parent with rights of possession of a child in accordance with the terms and conditions of Subchapter F, Chapter 153.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.030. STATE

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe and a foreign jurisdiction that has established procedures for rendition and enforcement of an order that are substantially similar to the procedures of this title.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.0301. STATE CASE REGISTRY

"State case registry" means the registry established and operated by the Title IV-D agency under 42 U.S.C. Section 654a that has responsibility for maintaining records with respect to child support orders in all Title IV-D cases and in all other cases in which a support order is rendered or modified under this title on or after October 1, 1998.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 5, eff. Sept. 1, 1997.

Sec. 101.0302. STATE DISBURSEMENT UNIT

"State disbursement unit" means the unit established and operated by the Title IV-D agency under 42 U.S.C. Section 654b that has responsibility for receiving, distributing, maintaining, and furnishing child support payments and records on or after October 1, 1999.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.031. SUIT

"Suit" means a legal action under this title.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 2, eff. September 1, 2015.

Sec. 101.032. SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

(a) "Suit affecting the parent-child relationship" means a suit filed as provided by this title in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is requested.

(b) The following are not suits affecting the parent-child relationship:

(1) a habeas corpus proceeding under Chapter 157;

(2) a proceeding filed under Chapter 159 to determine parentage or to establish, enforce, or modify child support, whether this state is acting as the initiating or responding state; and

(3) a proceeding under Title 2.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.033. TITLE IV-D AGENCY

"Title IV-D agency" means the state agency designated under Chapter 231 to provide services under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.034. TITLE IV-D CASE

"Title IV-D case" means an action in which services are provided by the Title IV-D agency under Part D, Title IV, of the federal Social Security Act (42 U.S.C. Section 651 et seq.), relating to the location of an absent parent, determination of parentage, or establishment, modification, or enforcement of a child support, medical support, or dental support obligation, including a suit for modification filed by the Title IV-D agency under Section 231.101(d) and any other action relating to the services that the Title IV-D agency is required or authorized to provide under Section 231.101.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 4, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 6, eff. September 1, 2018. Acts 2017, 85th Leg., R.S., Ch. 912 (S.B. 1329), Sec. 1.02, eff. Sept. 1, 2018.

Sec. 101.035. TRIBUNAL

"Tribunal" means a court, administrative agency, or quasi-judicial entity of a state authorized to establish, enforce, or modify support orders or to determine parentage.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 101.036. VITAL STATISTICS UNIT

"Vital statistics unit" means the vital statistics unit of the Department of State Health Services.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 1, eff. Sept. 1, 1999. Redesignated and amended from Family Code, Section 101.0021 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.027, eff. April 2, 2015.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

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Sec. 102.001. SUIT AUTHORIZED; SCOPE OF SUIT

(a) A suit may be filed as provided in this title.

(b) One or more matters covered by this title may be determined in the suit. The court, on its own motion, may require the parties to replead in order that any issue affecting the parent-child relationship may be determined in the suit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 102.002. COMMENCEMENT OF SUIT

An original suit begins by the filing of a petition as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 102.003. GENERAL STANDING TO FILE SUIT

(a) An original suit may be filed at any time by:

(1) a parent of the child;

(2) the child through a representative authorized by the court;

(3) a custodian or person having the right of visitation with or access to the child appointed by an order of a court of another state or country;

(4) a guardian of the person or of the estate of the child;

(5) a governmental entity;

(6) the Department of Family and Protective Services;

(7) a licensed child placing agency;

(8) a man alleging himself to be the father of a child filing in accordance with Chapter 160, subject to the limitations of that chapter, but not otherwise;

(9) a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition;

(10) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Chapter 161 or to whom consent to adoption has been given in writing under Chapter 162;

(11) a person with whom the child and the child's guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the filing of the petition if the child's guardian, managing conservator, or parent is deceased at the time of the filing of the petition;

(12) a person who is the foster parent of a child placed by the Department of Family and Protective Services in the person's home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition;

(13) a person who is a relative of the child within the third degree by consanguinity, as determined by Chapter 573, Government Code, if the child's parents are deceased at the time of the filing of the petition; ~~or~~

(14) a person who has been named as a prospective adoptive parent of a child by a pregnant woman or the parent of the child, in a verified written statement to confer standing executed under Section 102.0035, regardless of whether the child has been born; or

(15) subject to Subsection (d), a person who is an intended parent of a child or unborn child under a gestational agreement that complies with the requirements of Section 160.754.

(b) In computing the time necessary for standing under Subsections (a)(9), (11), and (12), the court may not require that the time be continuous and uninterrupted but shall consider the child's principal residence during the relevant time preceding the date of commencement of the suit.

(c) Notwithstanding the time requirements of Subsection (a)(12), a person who is the foster parent of a child may file a suit to adopt a child for whom the person is providing foster care at any time after the person has been approved to adopt the child. The standing to file suit under this subsection applies only to the adoption of a child who is eligible to be adopted.

(d) A person described by Subsection (a)(15) has standing to file an original suit only if:

(1) the person is filing an original suit jointly with the other intended parent under the gestational agreement; or

(2) the person is filing an original suit against the other intended parent under the gestational agreement.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1048, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 821, Sec. 2.07, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 37, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 573, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 10, eff. May 21, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.029, eff. April 2, 2015. Acts 2019, 86th Leg., H.B. 1689, Sec. 2, eff. Sept. 1, 2019.

ANNOTATIONS

Generally

Rivera v. Office of Attorney General, 960 S.W.2d 280, 281 (Tex. App.—Houston [1st Dist.] 1997, no pet). "The attorney general has independent standing to bring a suit affecting parent-child relationship."

Sec. 102.003(a)(2): "the child through a representative authorized by the court"

In re J.A., 109 S.W.3d 869, 873 (Tex. App.—Dallas 2003, pet. denied). A guardian ad litem appointed to represent a child has standing pursuant to subsection 102.002(a)(2) to file a SAPCR.

Sec. 102.003(a)(4): "a guardian of the person or of the estate of the child"

In re A.D.P., 281 S.W.3d 541, 549 (Tex. App.—El Paso 2008, no pet.). A temporary guardian appointed under the Probate Code has standing pursuant to subsection 102.002(a)(4) to file a SAPCR.

Sec. 102.003(a)(9): "a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition"

In re H.S., 550 S.W.3d 151, 159–60 (Tex. 2018). Nonparents who have served in a parent-like role to a child over an extended period of time have standing to preserve their relationship, over a parent's objection. A parent does not have to "wholly cease his or her own parental rights and responsibilities in order for a non-parent to exercise those same kinds of responsibilities and obtain standing under section 102.003(a)(9)." The Texas Supreme Court held that a nonparent has "'actual care, control, and possession of the child' under section 102.003(a)(9) if, for the requisite six-month time period, the nonparent served in a parent-like role by (1) sharing a principal residence with the child, (2) pro-

viding for the child's daily physical and psychological needs, and (3) exercising guidance, governance, and direction similar to that typically exercised on a day-to-day basis by parents with their children."

In re Clay, No. 02-18-00404-CV, 2019 WL 545722 (Tex. App.—Fort Worth Feb. 1, 2019, orig. proceeding). Mother's fiancée was able to establish standing to intervene after the mother's death as examined in light of *In re H.S.*, 550 S.W.3d 151 (Tex. 2018).

In re Lankford, 501 S.W.3d 681 (Tex. App.—Tyler 2016, orig. proceeding). Use of the word "actual" care, custody, and control in the statute indicates the legislature's intent, and since use of the term "legal" control could have been used but was not, "legal" control is not needed for standing. Thus, stepparent who had lived with the child for more than six months in father's residence, a portion of the time being when father was deployed to Afghanistan, had standing to seek conservatorship.

In re C.D.M., No. 11-15-00319-CV, 2016 WL 5853261 (Tex. App.—Eastland Oct. 6, 2016, no pet.) (mem. op.). When a grandparent pleads for conservatorship under section 102.003 and in the alternative for access pursuant to section 153.432, and the pleadings assert standing in accordance with the statutory scheme under section 102.003, those pleadings are sufficient to confer standing unless challenged. Father did not challenge the grandparents' standing under the general statute but only asserted a defect regarding their affidavit in support of relief under section 153.433, the grandparent access statute. Standing under section 102.003 does not require a family relationship and when grandparent seeks relief and qualifies under the general standing grounds the requirements for an affidavit under the grandparent access statute do not apply.

In re R.E.R., No. 13-14-00489-CV, 2016 WL 8737454 (Tex. App.—Corpus Christi Aug. 25, 2016, no pet.). Where same-sex couple raises one party's biological child together, the nonparent may assert standing under section 102.003. If the biological parent challenges standing, when subject matter jurisdiction depends upon disputed facts, the trial court must hear preliminary evidence to determine if it can make the decision at that time or if further evidence to fully develop the issues is required. If the jurisdictional facts implicate the merits of the case, the court must determine if a fact issue exists, and if so, the trial court cannot grant a plea to the jurisdiction but instead the jurisdictional facts must be determined on their merits by the fact finder. In this case, the court of appeals reversed and remanded after determining that the nonparent party raised sufficient evidence to create a fact issue and trial court had not fully considered all the evidence regarding nonparent's claimed standing under subsection 102.003(9).

In re I.I.G.T., 412 S.W.3d 803, 806–09 (Tex. App.—Dallas 2013, no pet.). Respondent "testified he had possession of the child and 'maintained care, custody, and control' of the child every weekend . . . pursuant to a 'permanent arrangement' between him and Mother. He also picked up the child from daycare and school once or twice per week. He testified the child has her own bedroom at his house that she decorates herself. . . . He said he did everything a father would do. . . . In this case, there was no court order for [Respondent's] possession of the child before he filed suit, and the evidence conflicts on whether [Respondent] and Mother had an agreement for [Respondent's] regular possession of the child. . . . [T]he record does not show that, for the six months of [Respondent's] possession of the child ending within 90 days of suit being filed, the parties intended for the child to occupy [Respondent's] home consistently over a substantial period of time and intended that [Respondent's] home be a permanent rather than a temporary abode for the child. Instead, Mother's testimony shows the periods of the child's residing with [Respondent] for the various weekends, holidays, and summer breaks were each intended to be a temporary arrangement."

In re Wells, 373 S.W.3d 174 (Tex. App.—Beaumont 2012, orig. proceeding). The court of appeals granted mandamus relief to overturn a trial court's decision allowing possession and access to a person who was not related to the child, but who had care and possession of a child for the requisite statutory period, because there was no evidence that the biological mother of the child was unfit and because the evidence showed that the biological mother retained legal control over whether the nonparent would have possession of the child. The court of appeals' decision turned on its interpretation of the term "control" as used in subsection 102.003(a)(9). According to the court of appeals, "control" means the power or authority to guide and manage the child, including the authority to make decisions of legal significance for the child, and not just the control implicit in having care and possession of the child. *See also In re C.T.H.S.*, 311 S.W.3d 204, 209 (Tex. App.—Beaumont 2010, pet. denied) (same); *In re K.K.C.*, 292 S.W.3d 788, 792–93 (Tex. App.—Beaumont 2009, orig. proceeding) (same).

Jasek v. Texas Department of Family & Protective Services, 348 S.W.3d 523, 532–37 (Tex. App.—Austin 2011, no pet.). The Austin court of appeals disagreed with the Beaumont court of appeals' decision in *K.K.C.*, above, that the term "control" used in the phrase "actual care, control, and possession" should be interpreted to mean "legal right of control over the child." The Austin court of appeals held that the term "actual" means something that exists in fact or in

reality as opposed to in law and that if the legislature had intended the term "control" to mean the child's legal conservator, the legislature would have used that term. After reviewing the case law, the Austin court of appeals concluded that as a general rule standing can be proved under subsection 102.003(a)(9) by evidence that the person asserting standing (1) lived in the same home as the child or lived in a home where the child stayed overnight on a regular and frequent basis; (2) made financial contributions benefitting the child; (3) was involved with the child's education; and (4) was involved in matters involving the child's general upbringing, like health care, feeding, and clothing.

In re M.K.S.–V., 301 S.W.3d 460, 464 (Tex. App.—Dallas 2009, pet. denied). The court of appeals reversed a trial court's decision that a mother's ex-partner did not have standing under subsection 102.003(a)(9) to sue for conservatorship and for breach of a written possession agreement. The evidence showed that the mother and her ex-partner signed a written possession agreement with characteristics similar to the standard possession order, that the ex-partner exercised her periods of possession under the agreement, that the child had a room with personal belongings at the ex-partner's home, that the ex-partner picked the child up from school, that the ex-partner administered medications to the child when the child was sick, that the child's school listed the ex-partner as a parent on school documents, that the mother referred to the ex-partner as a parent of the child to school officials, that the ex-partner attended school functions, and that the parties attended church together with the child even after their relationship ended.

In re M.J.G., 248 S.W.3d 753, 757–59 (Tex. App.—Fort Worth 2008, no pet.). Grandparents lacked standing under subsection 102.003(a)(9) because even though the children lived with their grandparents, and the grandparents performed day-to-day caregiving duties for the children, the children's parents also lived with the children in the grandparents' home, and there was no evidence that the parents did not care for their children or that they abdicated their parental duties and responsibilities to the grandparents.

Sec. 102.003(a)(10): "a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Chapter 161 or to whom consent to adoption has been given in writing under Chapter 162"

In re A.T., No. 14-14-00071-CV, 2014 WL 11153028 (Tex. App.—Houston [14th Dist.] July 15, 2014, no pet.). Foster parents "did not assert standing by filing an original suit under section 102.003(a)(10). Instead, [foster parents] asserted standing by invoking 102.003(a)(10) as a basis for their request to intervene. Although section 102.003 sets forth the statutory standing bases for filing an original suit rather than intervening, we cannot conclude that a person who satisfies the statutory standing requirements to file an original suit is nonetheless foreclosed from intervening. . . . It was error for the trial court not to consider whether the [foster parents] have standing to intervene under section 102.003(a)(10) when standing to intervene under that section was raised by the [foster parents'] pleadings and . . . arguments at the hearing on intervention."

Sec. 102.003(a)(11): "a person with whom the child and the child's guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the filing of the petition if the child's guardian, managing conservator, or parent is deceased at the time of the filing of the petition"

Texas Department of Family and Protective Services v. Sherry, 46 S.W.3d 857, 861 (Tex. 2001). The phrase "have resided" as used in subsection 102.003(a)(11) means "living together in the same household."

Doncer v. Dickerson, 81 S.W.3d 349, 358–61 (Tex. App.—El Paso 2002, no pet.). A stepmother had standing to sue for conservatorship under subsection 102.003(a)(11) when the evidence showed that the child split time evenly between his father's and mother's households before his father died and that the child spent at least six months in the father's household ending not more than 90 days before the stepmother filed suit.

Sec. 102.003(b): "In computing the time necessary for standing under Subsections (a)(9), (11), and (12), the court may not require that the time be continuous and uninterrupted but shall consider the child's principal residence during the relevant time preceding the date of commencement of the suit."

In re Kelso, 266 S.W.3d 586, 590 (Tex. App.—Fort Worth 2008, orig. proceeding). "Courts should determine a child's principal residence by looking at the following factors: (1) whether the child has a fixed place of abode within the possession of the party, (2) occupied or intended to be occupied consistently over a substantial period of time, and (3) which is permanent rather than temporary."

In re M.P.B., 257 S.W.3d 804, 809 (Tex. App.—Dallas 2008, no pet.). A child's "principal residence" as used in subsection 102.003(b) is established by considering the following factors: (1) whether the child has a fixed place of abode within the possession of the party; (2) whether the party occupied or intended to occupy the fixed place of abode con-

sistently over a substantial period of time; and (3) whether the occupation is permanent rather than temporary. The foregoing test is derived from *Snyder v. Pitts*, 241 S.W.2d 136, 140 (Tex. 1951), which held that a hotel room regularly occupied by a defendant to conduct business when away from home was a residence where a plaintiff could sue him under the general venue statute.

Doncer v. Dickerson, 81 S.W.3d 349, 358–61 (Tex. App.—El Paso 2002, no pet.). The court of appeals concluded that the term "principal residence" as used in subsection 102.003(b) did not mean the same thing as the term "primary residence." The court of appeals reasoned that the legislature used the term "primary residence" to settle disputes between conservators over where a child goes to school and to establish the confines of any geographic restriction imposed by the trial court. The court noted that it was necessary to define "principal residence" because one conservator must have the ability to determine residency when the child resides in two households, especially when the child's time is divided equally between households. The court stated "the Legislature's usage of [the term] 'principal residence' was deliberate. Had it intended to rely on the premise that a child's 'residence' for standing purposes should equate to 'primary residence' it would have used the phrase, since it did so in eleven sections of the [Family] Code."

RESOURCES

Scott A. Beauchamp & Lisa K. Hoppes, *Nonparent Standing*, Adv. Fam. L. (2018).

Sharla J. Fuller & Ramsey Burke Patton, *Standing and Other Non-Parent Issues*, Marriage Dissolution (2009).

Brad M. LaMorgese, *Jurisdiction and Venue*, Adv. Fam. L. Drafting (2011).

JoAl Cannon Sheridan, *All in the Family—Representing Relatives—Grandparents and Third-Party Standing*, Marriage Dissolution (2015).

JoAl Cannon Sheridan, *Follow the Yellow Brick Road: Jurisdiction, Standing, and Venue in Divorce and SAPCR Cases*, Marriage Dissolution (2010).

Tasha McInnis Wilson, *Non-Parent Standing*, Marriage Dissolution 101 (2018).

Sec. 102.0035. STATEMENT TO CONFER STANDING

(a) A pregnant woman or a parent of a child may execute a statement to confer standing to a prospective adoptive parent as provided by this section to assert standing under Section 102.003(a)(14). A statement to confer standing under this section may not be executed in a suit brought by a governmental entity under Chapter 262 or 263.

(b) A statement to confer standing must contain:

(1) the signature, name, age, and address of the person named as a prospective adoptive parent;

(2) the signature, name, age, and address of the pregnant woman or of the parent of the child who is consenting to the filing of a petition for adoption or to terminate the parent-child relationship as described by Subsection (a);

(3) the birth date of the child or the anticipated birth date if the child has not been born; and

(4) the name of the county in which the suit will be filed.

(c) The statement to confer standing must be attached to the petition in a suit affecting the parent-child relationship. The statement may not be used for any purpose other than to confer standing in a proceeding for adoption or to terminate the parent-child relationship.

(d) A statement to confer standing may be signed at any time during the pregnancy of the mother of the unborn child whose parental rights are to be terminated.

(e) A statement to confer standing is not required in a suit brought by a person who has standing to file a suit affecting the parent-child relationship under Sections 102.003(a)(1)–(13) or any other law under which the person has standing to file a suit.

(f) A person who executes a statement to confer standing may revoke the statement at any time before the person executes an affidavit for voluntary relinquishment of parental rights. The revocation of the statement must be in writing and must be sent by certified mail, return receipt requested, to the prospective adoptive parent.

(g) On filing with the court proof of the delivery of the revocation of a statement to confer standing under Subsection (f), the court shall dismiss any suit affecting the parent-child relationship filed by the prospective adoptive parent named in the statement.

Added by Acts 2003, 78th Leg., ch. 37, Sec. 2, eff. Sept. 1, 2003.

COMMENTS

The general rule in litigation is that standing cannot be conferred by consent. This section is an exception to the general rule. *In re M.K.S.–V.*, 301 S.W.3d 460, 464 (Tex. App.—Dallas 2009, pet. denied).

ANNOTATIONS

In re Mata, 212 S.W.3d 597, 609 (Tex. App.—Austin 2006, orig. proceeding). A hospital release signed by a biological mother that authorized would-be adoptive parents to take her child from a hospital did not confer standing on the would-be adoptive parents to file a SAPCR.

Sec. 102.004. STANDING FOR GRANDPARENT OR OTHER PERSON

(a) In addition to the general standing to file suit provided by Section 102.003, a grandparent, or another relative of the child related within the third degree by consanguinity, may file an original suit requesting managing conservatorship if there is satisfactory proof to the court that:

(1) the order requested is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development; or

(2) both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.

(b) An original suit requesting possessory conservatorship may not be filed by a grandparent or other person. However, the court may grant a grandparent or other person, subject to the requirements of Subsection (b–1) if applicable, deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under this chapter if there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development.

(b–1) A foster parent may only be granted leave to intervene under Subsection (b) if the foster parent would have standing to file an original suit as provided by Section 102.003(a)(12).

(c) Possession of or access to a child by a grandparent is governed by the standards established by Chapter 153.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1048, Sec. 2, eff. June 18, 1999. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 3, eff. June 18, 2005. Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 2, eff. September 1, 2007. Acts 2017, 85th Leg., R.S., Ch. 341 (H.B. 1410), Sec. 1, eff. Sept. 1, 2017.

COMMENTS

For many years grandparents have had standing to seek managing conservatorship when a child's present circumstances would significantly impair the child's physical well-being or emotional development. In 2007, the legislature amended the Family Code to grant any relative within the third degree of consanguinity of the child standing to seek

managing conservatorship. In other words, greatgrandparents, siblings, and blood aunts and uncles now have standing to seek managing conservatorship under this section.

The general rule in litigation is that standing cannot be conferred by consent. Subsection 102.004(a)(2) is an exception to this general rule. *In re M.K.S.–V.*, 301 S.W.3d 460, 464 (Tex. App.—Dallas 2009, pet. denied).

ANNOTATIONS

In re E.C., 05-17-00723-CV, 2017 WL 6505867, at *4 (Tex. App.—Dallas Dec. 20, 2017, no pet.). Court of appeals affirmed the trial court's dismissal of a plea in intervention because foster parents failed to allege and establish standing under subsection 102.004(b). The court of appeals determined that the legislature's recent amendment to subsection 102.004(b) indicates that it applies to persons who seek to intervene in a pending suit, even if the person may have had standing to bring an original suit.

In re Derzapf, 219 S.W.3d 327 (Tex. 2007). A step-grandparent may have standing to seek sole or joint managing conservatorship under the "substantial past contact" provision of subsection 102.004(b) but does not have standing to seek grandparent access under section 153.433.

In re J.R.W., No. 05-15-1479-CV, 2017 WL 1075610 (Tex. App.— Dallas Mar. 21, 2017) (mem. op.). When paternal grandparent pled alternatively for conservatorship under section 102.004 and access under section 153.432, court held that it could consider evidence of circumstances at any time leading up to the judgment to determine if the court acted properly in allowing grandparent standing through her intervention. Paternal grandparent's affidavit established sufficient facts to support a determination that the child would suffer substantially if the grandparent was not granted access; thus, the trial court's final orders allowing grandparent possession of the child were not an abuse of discretion.

In re L.D.F., 445 S.W.3d 823, 828–30 (Tex. App.—El Paso 2014, no pet.). "In family law cases in which a petitioner must go beyond mere pleading allegations and provide 'satisfactory proof' of jurisdictional facts to establish statutory standing, the petitioner meets that burden where those predicate facts are proven by a preponderance of the evidence. . . . [W]e refute [father's] contention that . . . appointment of a parent in a limited conservatorship capacity somehow automatically precludes appointment of a grandparent as joint managing conservator by operation of law. The language in the Family Code is clear: if sole managing conservatorship by one parent or joint managing conservatorship by both parents would result in significant impairment of a child's physical health or emotional development, the court has wide discretion to appoint conservators in the child's best interest. While we agree with [father] that section 102.004(b), a standing statute, does not grant the trial court power to appoint a parent and grandparent as joint managing conservators, section 153.372 specifically authorizes a nonparent to serve as a joint managing conservator with a parent. Thus, when the statutory provisions are read as a whole, it becomes clear that once a non-parent surpasses the high bar set for intervenor standing under section 102.004(b), the trial court may allow the grandparent 'to intervene and seek both managing and possessory conservatorship.' . . . Where a trial court appoints a parent and nonparent as joint managing conservators, it implicitly rules that parent's sole custody would significantly impair the child's physical health or emotional development. Here, because the trial court permitted grandparent intervention and joint custody in the case, we must assume it impliedly found that [father's] sole managing conservatorship would significantly impair [the child's] physical health or emotional development." *See also Mauldin v. Clements*, 428 S.W.3d 247, 263 (Tex. App.—Houston [1st Dist.] 2014, no. pet.).

In re K.D.H., 426 S.W.3d 879, 881 (Tex. App.—Houston [14th Dist.] 2014, no. pet.). "Today . . . this court addresses the legal standard for establishing standing under section 102.004(a)(1). . . . We conclude that, to have standing under this statute, a grandparent or other relative within the third degree of consanguinity must present proof that, when considered in the light most favorable to the petitioner, would enable reasonable and fair-minded people to find that the order requested is necessary because the child's circumstances on the date suit was filed would significantly impair the child's physical heath or emotional development." *But see In re L.D.F.*, 445 S.W.3d 823, 828 (Tex. App.—El Paso 2014, no pet.).

In re Salverson, No. 01-12-00343-CV, 2012 WL 1454549 (Tex. App.—Houston [1st Dist.] Apr. 23, 2012, orig. proceeding) (mem. op.). The court of appeals granted mandamus relief to overturn a trial court's determination that "foster-to-adopt-parents" did not have standing to intervene in a SAPCR brought by the TDFPS. The court of appeals concluded that "foster-to-adopt-parents" had standing as "other persons" under subsection 102.004(b).

In re Chester, 398 S.W.3d 795, 800–802 (Tex. App.—San Antonio Dec. 28, 2011, orig. proceeding). The court of appeals granted mandamus relief to overturn a trial court's decision to strike a paternal aunt's petition in intervention,

holding that the paternal aunt had standing as a relative within the third degree of consanguinity under subsection 102.004(a)(1).

In re Lewis, 357 S.W.3d 396, 399–402 (Tex. App.—Fort Worth 2011, orig. proceeding). The court of appeals granted mandamus relief to overturn a trial court's refusal to strike grandparents' intervention, holding that the grandparents lacked standing under subsection 102.004(a)(2) because both parent managing conservators refused to consent to the grandparents' intervention.

In re M.J.G., 248 S.W.3d 753, 757–59 (Tex. App.—Fort Worth 2008, no pet.). Grandparents lacked standing under subsection 102.004(a)(1) because they failed to prove that the child's present circumstances would significantly impair the child's physical well-being or emotional development.

Blackwell v. Humble, 241 S.W.3d 707, 722 (Tex. App.—Austin 2007, no pet.). "We agree . . . that [uncle] did not show that he had 'substantial past contact' with the children. [He] testified only that he had 'seen them regularly.' Without more, this does not show substantial past contact sufficient to warrant his intervention, especially in this case in which both parents are living and present and there is no testimony that the children are at risk living with [father]. . . . [However,] we cannot hold that the trial court abused its discretion in allowing [grandmother] to intervene. She frequently cared for the children, lived nearby, and spent a great deal of time with the family, and the trial court reasonably could have determined that she showed substantial past contact with the children." *But see In re M.A.M.*, 35 S.W.3d 788, 790 (Tex. App.—Beaumont 2001, no pet.) (Grandparents, unlike "other persons," are not required to show substantial past contact with children to intervene under subsection 102.004(b).).

In re M.A.M., 35 S.W.3d 788, 790 (Tex. App.—Beaumont 2001, no pet.). The court of appeals held that the phrase "deemed by the court to have had substantial past contact" modifies "other person," and not "grandparent." As such, it would appear that the mere existence of the grandparent-grandchild relationship is sufficient to confer standing under subsection 102.004(b) to file an intervention in a pending suit, thus recognizing, if not elevating, the status of grandparents, as opposed to other persons related to or with substantial past contact with the child.

RESOURCES

JoAl Cannon Sheridan, *All in the Family—Representing Relatives—Grandparents and Third-Party Standing*, Marriage Dissolution (2015).

Sec. 102.0045. STANDING FOR SIBLING

(a) The sibling of a child may file an original suit requesting access to the child as provided by Section 153.551 if the sibling is at least 18 years of age.

(a–1) The sibling of a child who is separated from the sibling as the result of an action by the Department of Family and Protective Services may file an original suit as provided by Section 153.551 requesting access to the child, regardless of the age of the sibling. A court shall expedite a suit filed under this subsection.

(b) Access to a child by a sibling of the child is governed by the standards established by Section 153.551.

Added by Acts 2005, 79th Leg., Ch. 1191 (H.B. 270), Sec. 1, eff. September 1, 2005. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 1, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 744 (H.B. 1781), Sec. 1, eff. September 1, 2015.

Sec. 102.005. STANDING TO REQUEST TERMINATION AND ADOPTION

An original suit requesting only an adoption or for termination of the parent-child relationship joined with a petition for adoption may be filed by:

(1) a stepparent of the child;

(2) an adult who, as the result of a placement for adoption, has had actual possession and control of the child at any time during the 30-day period preceding the filing of the petition;

(3) an adult who has had actual possession and control of the child for not less than two months during the three-month period preceding the filing of the petition;

(4) an adult who has adopted, or is the foster parent of and has petitioned to adopt, a sibling of the child; or

(5) another adult whom the court determines to have had substantial past contact with the child sufficient to warrant standing to do so.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 3(a), eff. September 1, 2007.

ANNOTATIONS

In re J.C., 399 S.W.3d 235, 238–39 (Tex. App.—San Antonio 2012, no pet.). "Here, although the trial court found that the paternal grandparents had not established sufficient substantial past contact with [child] to confer standing pursuant to section 102.005(5), it nonetheless held that the paternal grandparents had standing to bring their adoption suit pursuant to section 102.006(c). Thus, we must determine whether section 102.006(c), in and of itself, can confer standing. . . . [I]n order for a party to have standing to bring an original petition for adoption, the party must first meet the standing requirements of section 102.005. Section 102.006 does not confer standing, but instead limits which parties have standing to file a petition for adoption pursuant to section 102.005."

In re C.M.C., 192 S.W.3d 866, 871–72 (Tex. App.—Texarkana 2006, no pet.). The phrase "substantial past contact with the child sufficient to warrant standing," as used in section 102.005, means more than telephone calls, cards, and letters.

Rodarte v. Cox, 828 S.W.2d 65, 69–70 (Tex. App.—Tyler 1991, writ denied). "Substantial contact" does not require possession and control.

Sec. 102.006. LIMITATIONS ON STANDING

(a) Except as provided by Subsections (b) and (c), if the parent-child relationship between the child and every living parent of the child has been terminated, an original suit may not be filed by:

(1) a former parent whose parent-child relationship with the child has been terminated by court order;

(2) the father of the child; or

(3) a family member or relative by blood, adoption, or marriage of either a former parent whose parent-child relationship has been terminated or of the father of the child.

(b) The limitations on filing suit imposed by this section do not apply to a person who:

(1) has a continuing right to possession of or access to the child under an existing court order; or

(2) has the consent of the child's managing conservator, guardian, or legal custodian to bring the suit.

(c) The limitations on filing suit imposed by this section do not apply to an adult sibling of the child, a grandparent of the child, an aunt who is a sister of a parent of the child, or an uncle who is a brother of a parent of the child if the adult sibling, grandparent, aunt, or uncle files an original suit or a suit for modification requesting managing conservatorship of the child not later than the 90th day after the date the parent-child relationship between the child and the parent is terminated in a suit filed by the

Department of Family and Protective Services requesting the termination of the parent-child relationship.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 821, Sec. 2.08, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 866 (H.B. 1481), Sec. 1, eff. June 15, 2007.

ANNOTATIONS

In re J.M.F., No. 13-12-00640-CV, 2013 WL 5428114 (Tex. App.—Corpus Christi Sept. 26, 2013, no pet.). (mem. op.). "Even if standing is established, section 102.006 can limit standing in cases where the parent-child relationship has been terminated, such as in [child's] case. . . . [Petitioner] was [child's] natural uncle [and he and his wife had adopted child's older siblings]. Therefore, he would be ineligible to bring suit under 102.006(a)(3). . . . The trial court held, however, that the [102.006(c)] exception was inapplicable to [petitioners] because they did 'not have standing to file a SAPCR requesting managing conservatorship or possessory conservatorship,' presumably under section 102.003. [Petitioners], though, did not file a SAPCR requesting managing conservatorship or possessory conservatorship under section 102.003. Instead, they filed an original petition for adoption under section 102.005. Section 102.006(c) is drafted disjunctively—persons can either file 'an original suit' or 'a suit for modification requesting managing conservatorship.' Here, [petitioners] timely filed 'an original suit' for adoption . . . after the trial court terminated [child's] parents' parental rights. . . . [Petitioners] fit 'within the parameters' of the exception established by section 102.006(c) because [petitioner] was a natural uncle of [child] who filed an original petition within 90 days of the date [child's] parents' parental rights were terminated."

In re J.C., 399 S.W.3d 235, 238–39 (Tex. App.—San Antonio 2012, no pet.). "Here, although the trial court found that the paternal grandparents had not established sufficient substantial past contact with [child] to confer standing pursuant to section 102.005(5), it nonetheless held that the paternal grandparents had standing to bring their adoption suit pursuant to section 102.006(c). Thus, we must determine whether section 102.006(c), in and of itself, can confer standing. . . . [I]n order for a party to have standing to bring an original petition for adoption, the party must first meet the standing requirements of section 102.005. Section 102.006 does not confer standing, but instead limits which parties have standing to file a petition for adoption pursuant to section 102.005."

In re A.M., 312 S.W.3d 76, 82 (Tex. App.—San Antonio 2010, pet. denied). A maternal aunt lacked standing to file a SAPCR because she failed to file suit within ninety days after the trial court terminated the parent-child relationship between the child and the child's parents.

In re C.R.P., 192 S.W.3d 823, 826 (Tex. App.—Fort Worth 2006, no pet.). A mother and her husband lacked standing to file a SAPCR because the mother's parental rights previously had been terminated.

Sec. 102.007. STANDING OF TITLE IV-D AGENCY

In providing services authorized by Chapter 231, the Title IV-D agency or a political subdivision contracting with the attorney general to provide Title IV-D services under this title may file a child support action authorized under this title, including a suit for modification or a motion for enforcement.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.02, eff. Sept. 1, 1995.

ANNOTATIONS

In re A.M., 192 S.W.3d 570, 575 (Tex. 2006). "The Attorney General, as the Title IV-D agency and [mother's] assignee, is fully authorized to sue for unpaid child support and defend against any claim that might affect that collection," including a reimbursement claim.

Sec. 102.008. CONTENTS OF PETITION

(a) The petition and all other documents in a proceeding filed under this title, except a suit for adoption of an adult, shall be entitled "In the interest of _____, a child." In a suit in which adoption of a child is requested, the style shall be "In the interest of a child."

(b) The petition must include:

(1) a statement that:

(A) the court in which the petition is filed has continuing, exclusive jurisdiction or that no court has continuing jurisdiction of the suit; **or**

(B) in a suit in which adoption of a child is requested, the court in which the petition is filed has jurisdiction of the suit under Section 103.001(b);

(2) the name and date of birth of the child, except that if adoption of a child is requested, the name of the child may be omitted;

(3) the full name of the petitioner and the petitioner's relationship to the child or the fact that no relationship exists;

(4) the names of the parents, except in a suit in which adoption is requested;

(5) the name of the managing conservator, if any, or the child's custodian, if any, appointed by order of a court of another state or country;

(6) the names of the guardians of the person and estate of the child, if any;

(7) the names of possessory conservators or other persons, if any, having possession of or access to the child under an order of the court;

(8) the name of an alleged father of the child or a statement that the identity of the father of the child is unknown;

(9) a full description and statement of value of all property owned or possessed by the child;

(10) a statement describing what action the court is requested to take concerning the child and the statutory grounds on which the request is made;

(11) a statement as to whether, in regard to a party to the suit or a child of a party to the suit:

(A) there is in effect:

(i) a protective order under Title 4;

(ii) a protective order under **Subchapter A,** Chapter **7B** ~~7A~~, Code of Criminal Procedure; or

(iii) an order for emergency protection under Article 17.292, Code of Criminal Procedure; or

(B) an application for an order described by Paragraph (A) is pending; and

(12) any other information required by this title.

(c) The petitioner shall attach a copy of each order described by Subsection (b)(11)(A) in which a party to the suit or a child of a party to the suit was the applicant or victim of the conduct alleged in the application or order and the other party was the respondent or defendant of an action regarding the conduct alleged in the application or order without regard to the date of the order. If a copy of the order is not available at the time of filing, the petition must state that a copy of the order will be filed with the court before any hearing.

(d) Notwithstanding any other provision of this section, if the Title IV-D agency files a petition in a suit affecting the parent-child relationship, the agency is not required to:

(1) include in the petition the statement described by Subsection (b)(11); or

(2) attach copies of the documentation described by Subsection (c).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 296, Sec. 2, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., Ch. 885 (H.B. 3052), Sec. 6, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 369, Sec. 1, eff. Sept. 1, 2019. Acts 2019, 86th Leg., H.B. 4173, Sec. 2.36, eff. Jan. 1, 2021.

Section 5 of Acts 2019, 86th Leg., H.B. 369 states—

"Section 102.008(b), Family Code, as amended by this Act, applies to a petition in a suit affecting the parent-child relationship filed on or after the effective date of this Act. A petition filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose."

ANNOTATIONS

In re J.C.J., No. 05-14-01449-CV, 2016 WL 345942 (Tex. App.—Dallas Jan. 28, 2016, no pet.) (mem. op.). Oral motion for a trial amendment requesting the trial court to vacate bonds to secure child support was insufficient to modify the pleadings and would not be allowed over objection of other party.

Diaz v. Diaz, 126 S.W.3d 705, 707 (Tex. App.—Corpus Christi 2004, no pet.). The court of appeals dismissed the appeal of a post-answer default divorce decree as interlocutory, and held the decree void, because the Family Code requires joinder of a SAPCR with a divorce action. The father's petition for divorce failed to include the allegations required by the Family Code to raise SAPCR issues. Further, the children were under the continuing jurisdiction of a Minnesota court.

Dohrn v. Delgado, 941 S.W.2d 244, 248 (Tex. App.—Corpus Christi 1996, orig. proceeding). Courts must liberally construe the pleadings in SAPCRs. Technical rules of pleading and practice need not be strictly followed. As a result, a SAPCR petition need not specifically name the section of the Family Code on which a petitioner relies, as long as it makes the allegations necessary to support the relief afforded by that section.

Sec. 102.0086. CONFIDENTIALITY OF PLEADINGS

(a) This section applies only in a county with a population of 3.4 million or more.

(b) Except as otherwise provided by law, all pleadings and other documents filed with the court in a suit affecting the parent-child relationship are confidential, are excepted from required public disclosure under Chapter 552, Government Code, and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing the suit, whichever date is sooner.

Acts 2003, 78th Leg., ch. 1314, Sec. 3, eff. Sept. 1, 2003.

Sec. 102.009. SERVICE OF CITATION

(a) Except as provided by Subsection (b), the following are entitled to service of citation on the filing of a petition in an original suit:

(1) a managing conservator;

(2) a possessory conservator;

(3) a person having possession of or access to the child under an order;

(4) a person required by law or by order to provide for the support of the child;

(5) a guardian of the person of the child;

(6) a guardian of the estate of the child;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Chapter 161;

(8) an alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Chapter 161 or unless the petitioner has complied with the provisions of Section 161.002(b)(2), (3), or (4);

(9) a man who has filed a notice of intent to claim paternity as provided by Chapter 160;

(10) the Department of Family and Protective Services, if the petition requests that the department be appointed as managing conservator of the child;

(11) the Title IV-D agency, if the petition requests the termination of the parent-child relationship and support rights have been assigned to the Title IV-D agency under Chapter 231;

(12) a prospective adoptive parent to whom standing has been conferred under Section 102.0035; and

(13) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Chapter 161 or to whom consent to adoption has been given in writing under Chapter 162.

(b) Citation may be served on any other person who has or who may assert an interest in the child.

(c) Citation on the filing of an original petition in a suit shall be issued and served as in other civil cases.

(d) If the petition requests the establishment, termination, modification, or enforcement of a support right assigned to the Title IV-D agency under Chapter 231 or the rescission of a voluntary acknowledgment of paternity under Chapter 160, notice shall be given to the Title IV-D agency in a manner provided by Rule 21a, Texas Rules of Civil Procedure.

(e) In a proceeding under Chapter 233, the requirements imposed by Subsections (a) and (c) do not apply to the extent of any conflict between those requirements and the provisions in Chapter 233.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 599, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.12, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 821, Sec. 2.09, eff. June 14, 2001. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 4, eff. June 18, 2005. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 2, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 1, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 1, eff. June 19, 2009.

ANNOTATIONS

Texas Department of Family and Protective Services v. Sherry, 46 S.W.3d 857, 860–61 (Tex. 2001). This section did not require the Attorney General to serve an alleged father with citation because the Attorney General's petition alleged that another man was the father of the child. Further, subsection 102.009(b) did not require service on the alleged father because service under that subsection is discretionary with the petitioner and the court.

Griggs v. Latham, 98 S.W.3d 382, 385–86 (Tex. App.—Corpus Christi 2003, pet. denied). A trial court declared an agreed order granting access to the children's maternal grandparents void because their joint managing conservator father was entitled to notice and was a necessary party to the maternal grandparents' access suit. The maternal grandparents nonsuited the father before trial. He therefore did not participate in the trial that resulted in the order.

In re K.M.S., 68 S.W.3d 61, 67–68 (Tex. App.—Dallas 2001, pet. denied). Because both managing conservators had notice that a petitioner claimed to be the alleged father of a child, the petitioner was entitled to notice under subsection 102.009(a)(8).

Sec. 102.0091. WAIVER OF CITATION

(a) A party to a suit under this title may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 198 (S.B. 814), Sec. 5, eff. September 1, 2015.

Sec. 102.010. SERVICE OF CITATION BY PUBLICATION

(a) **Except as provided by Section 17.032, Civil Practice and Remedies Code, citation** ~~Citation~~ may be served ~~by publication as in other civil cases~~ to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown **by publication on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation published in the county in which the petition was filed.**

(b) Citation by publication shall be published **not later than the 20th day before the date set for the hearing** ~~one time~~. ~~If the name of a person entitled to service of citation is unknown, the notice to be published shall be addressed to "All Whom It May Concern."~~ One or more causes to be heard on a certain day may be included in one notice and hearings may be continued from time to time without further notice.

(c) Citation by publication shall be sufficient if given in substantially the following form:

To (names of persons to be served with citation) and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

"STATE OF TEXAS

"You have been sued. You may employ an attorney. If you or your attorney do (does) not file a written answer with the clerk who issued this citation by 10 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of _____, Petitioner, was filed in the Court of _____ County, Texas, on the ___ day of _____, _____, against _____, Respondent(s), numbered _____, and entitled 'In the interest of _____, a child (or children).' The suit requests (statement of relief requested, e.g., 'terminate the parent-child relationship'). The date and place of birth of the child (children) who is (are) the subject of the suit: _____.

"The court has authority in this suit to render an order in the child's (children's) interest that will be binding on you, including the termination of the parent-child relationship, the determination of paternity, and the appointment of a conservator with authority to consent to the child's (children's) adoption.

"Issued and given under my hand and seal of the Court at _____, Texas, this the ___ day of _____, ____.

"_____

Clerk of the District Court of

_____ County, Texas.

By _____, Deputy."

(d) In any suit in which service of citation is by publication, a statement of the evidence of service, approved and signed by the court, must be filed with the papers of the suit as a part of the record.

(e) In a suit filed under Chapter 161 or 262 in which the last name of the respondent is unknown, the court may order substituted service of citation by publication, including publication by posting the citation at the courthouse door for a specified time, if the court finds and states in its order that the method of substituted service is as likely as citation by publication **on the public information Internet website maintained as required by Section 72.034, Government Code, or** in a newspaper in the manner described by Subsection (b) to give the respondent actual notice of the suit. If the court orders that citation by publication shall be completed by posting the citation at the courthouse door for a specified time, service must be completed on, and the answer date is computed from, the expiration date of the posting period. If the court orders another method of substituted service of citation by publication, service shall be completed as directed by the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1015, Sec. 1, eff. Sept. 1, 2003. Acts 2019, 86th Leg., S.B. 891, Sec. 10.10, eff. Sept. 1, 2019.

Section 15.05 of Acts 2019, 86th Leg., S.B. 891 states—

"The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, implement a provision of this Act using other appropriations available for that purpose."

ANNOTATIONS

In re E.R., 385 S.W.3d 552, 564–66 (Tex. 2012). "[I]f personal service can be effected by the exercise of reasonable diligence, substituted service is not to be resorted to. . . . A diligent search must include inquiries that someone who really wants to find the defendant would make, and diligence is measured not by the quantity of the search but by its quality. . . . [Caseworker] neglected 'obvious inquiries' a prudent investigator would have made. . . . When a known parent has not left the jurisdiction, when she has attended at least two court hearings and has come to the Department offices for a prescheduled, hour-long meeting with her children during the very period service was being attempted, and when the Department can reach her by telephone and can communicate with her family members, service by publication cannot provide the kind of process she is due. Sending a few faxes, checking websites, and making three phone calls—none of which were to [mother] or her family members—is not the type of diligent inquiry required before the Department may dispense with actual service in a case like this. . . . Here, it was both possible and practicable to more adequately warn [mother] of the impending termination of her parental rights, and notice by publication was therefore constitutionally inadequate."

Rider v. Farris, 718 S.W.2d 883, 884 (Tex. App.—Beaumont 1986, writ dism'd w.o.j.). Service of citation by publication was insufficient when it gave a party no more than sixteen days' notice of a hearing.

Sec. 102.011. ACQUIRING JURISDICTION OVER NONRESIDENT

(a) The court may exercise status or subject matter jurisdiction over the suit as provided by Chapter 152.

(b) The court may also exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if:

(1) the person is personally served with citation in this state;

(2) the person submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the child resides in this state as a result of the acts or directives of the person;

(4) the person resided with the child in this state;

(5) the person resided in this state and provided prenatal expenses or support for the child;

(6) the person engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the person, as provided by Chapter 160:

(A) registered with the paternity registry maintained by the vital statistics unit; or

(B) signed an acknowledgment of paternity of a child born in this state; or

(8) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 2, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 2, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.030, eff. April 2, 2015.

ANNOTATIONS

Burnham v. Superior Court, 495 U.S. 604 (1990). The United States Supreme Court upheld the exercise of personal jurisdiction in a divorce case when a California wife served her New Jersey husband with divorce papers during his business trip to California.

Kulko v. Superior Court, 436 U.S. 84 (1978). A California trial court did not acquire personal jurisdiction over a New York husband because California's long-arm statute did not comport with federal due-process requirements.

In re S.A.V., 837 S.W.2d 80, 83 (Tex. 1992). Texas courts may exercise subject matter jurisdiction over a suit involving custody or visitation. If a petitioner seeks child support or visitation expenses, personal jurisdiction is required.

In re Burk, 252 S.W.3d 736, 740–41 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). The court of appeals denied mandamus relief to a mother who complained of a trial court's ruling that Texas was a child's home state when the evidence showed that the child was less than six months old, the child had lived in Texas from birth until removal, the father remained in Texas, and the father filed suit within six months of the child's removal from Texas.

In re Calderon-Garza, 81 S.W.3d 899, 901–904 (Tex. App.—El Paso 2002, orig. proceeding). In a paternity suit, a trial court properly exercised jurisdiction over a mother who moved to Mexico with her son. Texas was the child's "home state" under the UCCJEA because the child was born in Texas and had resided in Texas for approximately three months before the mother removed him.

Phillips v. Phillips, 826 S.W.2d 746, 748 (Tex. App.—Houston [14th Dist.] 1992, no writ). If a petitioner seeks child support, then the petitioner must establish personal jurisdiction over a nonresident respondent by showing (1) the respondent purposely established minimum contacts with the forum state, and (2) the exercise of jurisdiction comports with fair play and substantial justice.

Sec. 102.012. EXERCISING PARTIAL JURISDICTION

(a) A court in which a suit is filed may exercise its jurisdiction over those portions of the suit for which it has authority.

(b) The court's authority to resolve all issues in controversy between the parties may be restricted because the court lacks:

(1) the required personal jurisdiction over a nonresident party;

(2) the required jurisdiction under Chapter 152; or

(3) the required jurisdiction under Chapter 159.

(c) If a provision of Chapter 152 or Chapter 159 expressly conflicts with another provision of this title and the conflict cannot be reconciled, the provision of Chapter 152 or Chapter 159 prevails.

(d) In exercising jurisdiction, the court shall seek to harmonize the provisions of this code, the federal Parental Kidnapping Prevention Act (28 U.S.C. Section 1738A), and the federal Full Faith and Credit for Child Support Order Act (28 U.S.C. Section 1738B).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.13, eff. Sept. 1, 1999.

Sec. 102.013. Docketing Requirements

(a) In a suit for modification or a motion for enforcement, the clerk shall file the petition or motion and all related papers under the same docket number as the prior proceeding without additional letters, digits, or special designations.

(b) If a suit requests the adoption of a child, the clerk shall file the suit and all other papers relating to the suit in a new file having a new docket number.

(c) In a suit to determine parentage under this title in which the court has rendered an order relating to an earlier born child of the same parents, the clerk shall file the suit and all other papers relating to the suit under the same docket number as the prior parentage action. For all other purposes, including the assessment of fees and other costs, the suit is a separate suit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 2, eff. Sept. 1, 2001.

Sec. 102.014. Use of Digitized Signature

(a) A digitized signature on an original petition under this chapter or any other pleading or order in a suit satisfies the requirements for and imposes the duties of signatories to pleadings, motions, and other papers identified under Rule 13, Texas Rules of Civil Procedure.

(b) A digitized signature under this section may be applied only by, and must remain under the sole control of, the person whose signature is represented.

Added by Acts 2013, 83rd Leg., R.S., Ch. 790 (S.B. 1422), Sec. 2, eff. September 1, 2013.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 103. VENUE AND TRANSFER OF ORIGINAL PROCEEDINGS

Sec. 103.001. VENUE FOR ORIGINAL SUIT **[amended]** 351

Sec. 103.002. TRANSFER OF ORIGINAL PROCEEDINGS WITHIN STATE 352

Sec. 103.003. TRANSFER OF ORIGINAL SUIT WITHIN STATE WHEN PARTY OR CHILD RESIDES OUTSIDE STATE 352

Sec. 103.001. VENUE FOR ORIGINAL SUIT

(a) Except as otherwise provided by this title, an original suit shall be filed in the county where the child resides, unless:

(1) another court has continuing exclusive jurisdiction under Chapter 155; or

(2) venue is fixed in a suit for dissolution of a marriage under Subchapter D, Chapter 6..

(b) A suit in which adoption is requested may be filed in the county where the child resides or in the county where the petitioners reside, regardless of whether another court has continuing exclusive jurisdiction under Chapter 155. **Except as provided by Section 155.201, a** ~~A~~ court that has continuing exclusive jurisdiction is not required to transfer the suit affecting the parent-child relationship to the court in which the adoption suit is filed.

(c) A child resides in the county where the child's parents reside or the child's parent resides, if only one parent is living, except that:

(1) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(2) if the parents of the child do not reside in the same county and if a managing conservator, custodian, or guardian of the person has not been appointed, the child resides in the county where the parent having actual care, control, and possession of the child resides;

(3) if the child is in the care and control of an adult other than a parent and a managing conservator, custodian, or guardian of the person has not been appointed, the child resides where the adult having actual care, control, and possession of the child resides;

(4) if the child is in the actual care, control, and possession of an adult other than a parent and the whereabouts of the parent and the guardian of the person is unknown, the child resides where the adult having actual possession, care, and control of the child resides;

(5) if the person whose residence would otherwise determine venue has left the child in the care and control of the adult, the child resides where that adult resides;

(6) if a guardian or custodian of the child has been appointed by order of a court of another state or country, the child resides in the county where the guardian or custodian resides if that person resides in this state; or

(7) if it appears that the child is not under the actual care, control, and possession of an adult, the child resides where the child is found.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.14, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 8, eff. September 1, 2015. Acts 2019, 86th Leg., H.B. 369, Sec. 2, eff. Sept. 1, 2019.

Section 6 of Acts 2019, 86th Leg., H.B. 369 states—

"The changes in law made by this Act to Sections 103.001, 155.201, and 155.204, Family Code, apply to a motion to transfer a suit affecting the parent-child relationship filed on or after the effective date of this Act. A motion to transfer a suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that motion was filed, and the former law is continued in effect for that purpose."

ANNOTATIONS

Leonard v. Paxson, 654 S.W.2d 440, 441–42 (Tex. 1983, orig. proceeding). The mandatory venue and transfer provisions of the Family Code are binding. They may not be negated by contract. The Texas Supreme Court concluded

that to hold otherwise would defeat the legislature's intent that a SAPCR be heard in the county where the child resides.

In re B.T.G., 494 S.W.3d 839 (Tex. App.—Dallas 2016, no pet.). Because joinder of a SAPCR with a suit for dissolution of marriage is mandatory under Tex. Fam. Code § 6.406, a trial court has no authority to sever divorce or property actions from a SAPCR.

In re Nabors, 276 S.W.3d 190, 196–97 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding). A Harris County trial court abused its discretion by refusing to transfer a case to Fort Bend County, where the children actually resided, even though the TDFPS had sole managing conservatorship of the children, because the children had lived with their foster parents for over six months in Fort Bend County before the filing of suit.

In re Ferguson, 172 S.W.3d 122, 126–27 (Tex. App.—Beaumont 2005, orig. proceeding). The court of appeals rejected the idea that a child could reside in a county where the child did not principally live or go to school. The child's mother claimed that she intended to live in one county, but the evidence showed that she and the child lived in another county and the child went to school in that county.

Carroll v. Crouch, 624 S.W.2d 398, 399 (Tex. App.—Fort Worth 1981, no writ). A court's continuing, exclusive jurisdiction over custody matters may not be conferred by agreement or waived by the parties.

RESOURCES

Sally Holt Emerson, *Jurisdiction and Venue in SAPCR*, Adv. Fam. L. (2007).

Brad M. LaMorgese, *Jurisdiction and Venue*, Adv. Fam. L. Drafting (2011).

Kimberly M. Naylor, *How to Get Out of (or Stay in) Dodge: Venue Challenges*, Adv. Fam. L. (2018).

JoAl Cannon Sheridan and Kristiana Butler, *Which Way Do We Go? Drafting Jurisdictional Challenges and Responses in Divorce and SAPCR Cases*, Adv. Fam. L. Drafting (2017).

Sec. 103.002. TRANSFER OF ORIGINAL PROCEEDINGS WITHIN STATE

(a) If venue of a suit is improper in the court in which an original suit is filed and no other court has continuing, exclusive jurisdiction of the suit, on the timely motion of a party other than the petitioner, the court shall transfer the proceeding to the county where venue is proper.

(b) On a showing that a suit for dissolution of the marriage of the child's parents has been filed in another court, a court in which a suit is pending shall transfer the proceedings to the court where the dissolution of the marriage is pending.

(c) The procedures in Chapter 155 apply to a transfer of:

(1) an original suit under this section; or

(2) a suit for modification or a motion for enforcement under this title.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 103.003. TRANSFER OF ORIGINAL SUIT WITHIN STATE WHEN PARTY OR CHILD RESIDES OUTSIDE STATE

(a) A court of this state in which an original suit is filed or in which a suit for child support is filed under Chapter 159 shall transfer the suit to the county of residence of the party who is a resident of this state if all other parties and children affected by the proceedings reside outside this state.

(b) If one or more of the parties affected by the suit reside outside this state and if more than one party or one or more children affected by the proceeding reside in this state in different counties, the court shall transfer the suit according to the following priorities:

(1) to the court of continuing, exclusive jurisdiction, if any;

(2) to the county of residence of the child, if applicable, provided that:

(A) there is no court of continuing, exclusive jurisdiction; or

(B) the court of continuing, exclusive jurisdiction finds that neither a party nor a child affected by the proceeding resides in the county of the court of continuing jurisdiction; or

(3) if Subdivisions (1) and (2) are inapplicable, to the county most appropriate to serve the convenience of the resident parties, the witnesses, and the interest of justice.

(c) If a transfer of an original suit or suit for child support under Chapter 159 is sought under this section, Chapter 155 applies to the procedures for transfer of the suit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 104. EVIDENCE

Sec. 104.001. RULES OF EVIDENCE 355

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Sec. 104.006. HEARSAY STATEMENT OF CHILD ABUSE VICTIM 357

Sec. 104.007. VIDEO TESTIMONY OF CERTAIN PROFESSIONALS 358

Sec. 104.008. CERTAIN TESTIMONY PROHIBITED 358

Sec. 104.001. RULES OF EVIDENCE

Except as otherwise provided, the Texas Rules of Evidence apply as in other civil cases.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 6.002, eff. September 1, 2005.

Sec. 104.002. PRERECORDED STATEMENT OF CHILD

If a child 12 years of age or younger is alleged in a suit under this title to have been abused, the recording of an oral statement of the child recorded prior to the proceeding is admissible into evidence if:

(1) no attorney for a party was present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;

(4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(5) each voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and

(7) each party is afforded an opportunity to view the recording before it is offered into evidence.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re E.A.G., 373 S.W.3d 129 (Tex. App.—San Antonio 2012, pet. denied). A terminated mother waived her complaint about admission of a child's prerecorded statement when the mother moved to introduce the statement into evidence.

In re S.W., No. 04-09-00619-CV, 2010 WL 1909548 (Tex. App.—San Antonio May 12, 2010, pet. denied) (mem. op.). A mother waived her complaint that the trial court failed to follow the procedures set forth in this section because her complaint did not match the objection she lodged in her motion for new trial. The objection in the motion for new trial complained that the mother had been unable to confront the child witnesses because the children testified in chambers rather than under this section's procedure.

In re S.P., 168 S.W.3d 197, 209–10 (Tex. App.—Dallas 2005, no pet.). The court of appeals reversed a trial court's decision to admit a prerecorded statement of a child in a termination proceeding because the child was not available to testify. The court of appeals reasoned that although section 104.002 establishes the predicate for admission of a prerecorded statement, it does not authorize a trial court to use a prerecorded statement in lieu of testimony without making the child available as a witness at trial, as required by section 104.006.

In re S.H., No. 10-02-086-CV, 2004 WL 254011 (Tex. App.—Waco Feb. 11, 2004, no pet.) (mem. op.). The court of appeals noted that section 104.006 contains a reliability component, but that section 104.002 does not, since section 104.002 is a specific statute dealing with admission of videotaped testimony while section 104.006 is a general statute dealing with the admission of hearsay statements of a child.

Ochs v. Martinez, 789 S.W.2d 949, 951–56 (Tex. App.—San Antonio 1990, writ denied). An appellate court reversed a jury verdict changing sole managing conservatorship from a mother to a father because videotape of a social worker's interview of one of the children included leading questions. These questions, and answers to them, should have been edited from the tape before the trial court admitted it into evidence.

Sec. 104.003. PRERECORDED VIDEOTAPED TESTIMONY OF CHILD

(a) The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding.

(b) Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during the child's testimony.

(c) Only the attorneys for the parties may question the child.

(d) The persons operating the equipment shall be placed in a manner that prevents the child from seeing or hearing them.

(e) The court shall ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 104.004. REMOTE TELEVISED BROADCAST OF TESTIMONY OF CHILD

(a) If in a suit a child 12 years of age or younger is alleged to have been abused, the court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties.

(b) The procedures that apply to prerecorded videotaped testimony of a child apply to the remote broadcast of testimony of a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 104.005. SUBSTITUTION FOR IN-COURT TESTIMONY OF CHILD

(a) If the testimony of a child is taken as provided by this chapter, the child may not be compelled to testify in court during the proceeding.

(b) The court may allow the testimony of a child of any age to be taken in any manner provided by this chapter if the child, because of a medical condition, is incapable of testifying in open court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 11, eff. Sept. 1, 1995.

Sec. 104.006. HEARSAY STATEMENT OF CHILD ABUSE VICTIM

In a suit affecting the parent-child relationship, a statement made by a child 12 years of age or younger that describes alleged abuse against the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside the presence of the jury, the court finds that the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability and:

(1) the child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or

(2) the court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 4, eff. Sept. 1, 1997.

ANNOTATIONS

Ohio v. Clark, 135 S. Ct. 2173, 2180–83 (2015). "[A] statement cannot fall within the [Sixth Amendment's] Confrontation Clause [which gives the accused the right to confront a witness,] unless [the statement's] primary purpose was testimonial. . . . [Child's] statements occurred in the context of an ongoing emergency involving suspected child abuse. . . . [T]he immediate concern was to protect a vulnerable child who needed help. . . . There is no indication that the primary purpose of the conversation was to gather evidence for the [abuser's] prosecution. . . . Statements by very young children will rarely, if ever, implicate the Confrontation Clause. . . . Few preschool students understand the details of our criminal justice system. . . . Thus it is extremely unlikely that a 3-year-old child . . . would intend his statements to be a substitute for trial testimony. [¶] Statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers. It is common sense that the relationship between a student and his teacher is very different from that between a citizen and the police. . . . In light of these circumstances, the Sixth Amendment did not prohibit the State from introducing [child's] statements at trial. . . . In any Confrontation Clause case, the individual who provided the out-of-court statement is not available as an in-court witness, but the testimony is admissible under an exception to the hearsay rules and is probative of the defendant's guilt. . . . [Child's] statements to his teachers were not testimonial."

In re M.R., 243 S.W.3d 807, 813 (Tex. App.—Fort Worth 2007, no pet.). Whether a child's hearsay statement should be admitted to prove that the child is a victim of abuse is determined on a case-by-case basis. To admit such a statement, a court must determine whether the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability. In making this determination, the court may consider a number of factors indicating that the statement is reliable, including: (1) whether the child victim testifies at trial and admits making the out-of-court statement; (2) whether the child understands the need to tell the truth and has the ability to observe, recollect, and narrate; (3) whether the other evidence corroborates the statement; (4) whether the child made the statement spontaneously in his own terminology or whether evidence exists of prior prompting or manipulation by adults; (5) whether the child's statement is clear and unambiguous and rises to the needed level of certainty; (6) whether the statement is consistent with other evidence; (7) whether the statement describes an event that a child of the victim's age could not be expected to fabricate; (8) whether the child behaved abnormally after the contact; (9) whether the child has a motive to fabricate the statement; (10) whether the child expects punishment because of reporting the conduct; and (11) whether the accused had the opportunity to commit the offense. *See also* Tex. Code Crim. Proc. art. 38.072, Hearsay Statement of Child Abuse Victims.

In re E.A.K., 192 S.W.3d 133, 147 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). A trial court erred when it admitted the report of a TDFPS caseworker because the report lacked the requisite indicia of reliability. The report did not explain whether the caseworker was present for the child's interview, how the caseworker obtained the child's statements recounted in the report, whether the statements were elicited by leading questions made during the interview, or whether the child understood the difference between truth and lies.

In re S.P., 168 S.W.3d 197, 209–10 (Tex. App.—Dallas 2005, no pet.). The court of appeals reversed the trial court's decision to admit a prerecorded statement of a child in a termination proceeding because the child was not available to testify. The court of appeals reasoned that although section 104.002 establishes the predicate for admis-

sion of a prerecorded statement, it does not authorize a trial court to use a prerecorded statement in lieu of testimony without making the child available as a witness at trial, as required by section 104.006.

Sec. 104.007. VIDEO TESTIMONY OF CERTAIN PROFESSIONALS

(a) In this section, "professional" has the meaning assigned by Section 261.101(b).

(b) In a proceeding brought by the Department of Family and Protective Services concerning a child who is alleged in a suit to have been abused or neglected, the court may order that the testimony of a professional be taken outside the courtroom by videoconference:

(1) on the agreement of the department's counsel and respondent's counsel; or

(2) if good cause exists, on the court's own motion.

(c) In ordering testimony to be taken as provided by Subsection (b), the court shall ensure that the videoconference testimony allows:

(1) the parties and attorneys involved in the proceeding to be able to see and hear the professional as the professional testifies; and

(2) the professional to be able to see and hear the parties and attorneys examining the professional while the professional is testifying.

(d) If the court permits the testimony of a professional by videoconference as provided by this section to be admitted during the proceeding, the professional may not be compelled to be physically present in court during the same proceeding to provide the same testimony unless ordered by the court.

Added by Acts 2003, 78th Leg., ch. 266, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 9, eff. September 1, 2015.

Sec. 104.008. CERTAIN TESTIMONY PROHIBITED

(a) A person may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child at issue in a suit unless the person has conducted a child custody evaluation relating to the child under Subchapter D, Chapter 107.

(b) In a contested suit, a mental health professional may provide other relevant information and opinions, other than those prohibited by Subsection (a), relating to any party that the mental health professional has personally evaluated.

(c) This section does not apply to a suit in which the Department of Family and Protective Services is a party.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 2.01, eff. September 1, 2015.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

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Sec. 105.001. TEMPORARY ORDERS BEFORE FINAL ORDER

(a) In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child, including an order:

(1) for the temporary conservatorship of the child;

(2) for the temporary support of the child;

(3) restraining a party from disturbing the peace of the child or another party;

(4) prohibiting a person from removing the child beyond a geographical area identified by the court; or

(5) for payment of reasonable attorney's fees and expenses.

(b) Except as provided by Subsection (c), temporary restraining orders and temporary injunctions under this section shall be granted without the necessity of an affidavit or verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held. Except as provided by Subsection (h), an order may not be rendered under Subsection (a)(1), (2), or (5) except after notice and a hearing. A temporary restraining order or temporary injunction granted under this section need not:

(1) define the injury or state why it is irreparable;

(2) state why the order was granted without notice; or

(3) include an order setting the cause for trial on the merits with respect to the ultimate relief requested.

(c) Except on a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure, an order may not be rendered:

(1) attaching the body of the child;

(2) taking the child into the possession of the court or of a person designated by the court; or

(3) excluding a parent from possession of or access to a child.

(d) In a suit, the court may dispense with the necessity of a bond in connection with temporary orders on behalf of the child.

(e) Temporary orders rendered under this section are not subject to interlocutory appeal.

(f) The violation of a temporary restraining order, temporary injunction, or other temporary order rendered under this section is punishable by contempt and the order is subject to and enforceable under Chapter 157.

(g) The rebuttable presumptions established in favor of the application of the guidelines for a child support order and for the standard possession order under Chapters 153 and 154 apply to temporary orders. The presumptions do not limit the authority of the court to render other temporary orders.

(h) An order under Subsection (a)(1) may be rendered without notice and an adversary hearing if the order is an emergency order sought by a governmental entity under Chapter 262.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1390, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1036, Sec. 1, eff. Sept. 1, 2003.

ANNOTATIONS

Attorney's fees

In re Payne, No. 03-17-00757-CV, 2018 WL 1630933, at *3 (Tex. App.—Austin Apr. 5, 2018, no pet.) (mem. op.). The court of appeals reversed an award of interim attorney's fees under subsection 105.001(a)(5) because no evidence was presented that the fees were necessary for the safety and welfare of the child. At the hearing, husband's counsel testified that the wife had created circumstances giving rise to increased fees, including the request for a jury, and the trial court awarded interim attorney's fees. However, no evidence of the circumstances was presented at the hearing, and although the trial court had heard evidence on those matters in prior hearings, the husband's counsel did not request that the court take judicial notice of those hearings or of the specific evidence and facts which supported the claims. The husband also failed to provide any evidence of his own financial circumstances or inability to pay the fees necessary to take the case to trial. The court of appeals also noted that at the time of the hearing, the trial court had already issued temporary orders limiting the wife's access to supervised visitation. Therefore, the safety of the children had already been met by the temporary orders.

In re Rogers, 370 S.W.3d 443, 446–48 (Tex. App.—Austin 2012, orig. proceeding). The court of appeals reversed an award of $20,000 in interim attorney's fees under subsection 105.001(a)(5) because the mother failed to prove that the award of fees was for the "safety and welfare of the child." Temporary orders already in place adequately protected the children. Also, the mother admitted that she was saving money to rent a house, had received some free legal advice from her boyfriend and his brother, and was making arrangements to get her attorney some money.

Saxton v. Daggett, 864 S.W.2d 729, 736 (Tex. App.—Houston [1st Dist.] 1993, orig. proceeding). The court of appeals reversed an award of $19,000 in interim fees under subsection 105.001(a)(5) to "level the playing field" because the evidence failed to show that the award of fees was for the "safety and welfare of the child." The mother had paid her attorney a $10,000 retainer, agreed to pay her attorney $400 per hour, and was married to a dentist.

Contempt

Ex parte Slavin, 412 S.W.2d 43 (Tex. 1967, orig. proceeding). An order must provide details of compliance in clear, specific, and unambiguous terms. Otherwise, it cannot be enforced by contempt.

In re Davis, 372 S.W.3d 253 (Tex. App.—Texarkana 2012, orig. proceeding). The court of appeals granted a writ of habeas corpus because the underlying order was vague and required payment of a debt. A person may not be imprisoned for failing to pay a debt.

Restraining order

In re K.L.R., 162 S.W.3d 291, 298–301 (Tex. App.—Tyler 2005, no pet.). A trial court did not abuse its discretion by granting a temporary restraining order under subsection 105.001(b) based on a motion that failed to allege specific facts justifying an order enjoining the mother from removing the child from the jurisdiction of the court, from school, or from the father's possession.

Temporary conservatorship

In re Pacharzina, No. 03-12-00353-CV, 2012 WL 2161005 (Tex. App.—Austin June 14, 2012, orig. proceeding) (mem. op.). A trial court may not order that a child's name be permanently changed in temporary orders.

In re Herring, 221 S.W.3d 729, 730–31 (Tex. App.—San Antonio 2007, orig. proceeding). A trial court abused its discretion when, without giving a father notice and an opportunity to be heard, the court modified a temporary order to require the parties' child to live with the mother.

Sec. 105.0011. Information Regarding Protective Orders

At any time while a suit is pending, if the court believes, on the basis of any information received by the court, that a party to the suit or a member of the party's family or household may be a victim of family violence, the court shall inform that party of the party's right to apply for a protective order under Title 4.

Added by Acts 2005, 79th Leg., Ch. 361 (S.B. 1275), Sec. 3, eff. June 17, 2005.

Sec. 105.002. JURY

(a) Except as provided by Subsection (b), a party may demand a jury trial.

(b) A party may not demand a jury trial in:

(1) a suit in which adoption is sought, including a trial on the issue of denial or revocation of consent to the adoption by the managing conservator; or

(2) a suit to adjudicate parentage under Chapter 160.

(c) In a jury trial:

(1) a party is entitled to a verdict by the jury and the court may not contravene a jury verdict on the issues of:

(A) the appointment of a sole managing conservator;

(B) the appointment of joint managing conservators;

(C) the appointment of a possessory conservator;

(D) the determination of which joint managing conservator has the exclusive right to designate the primary residence of the child;

(E) the determination of whether to impose a restriction on the geographic area in which a joint managing conservator may designate the child's primary residence; and

(F) if a restriction described by Paragraph (E) is imposed, the determination of the geographic area within which the joint managing conservator must designate the child's primary residence; and

(2) the court may not submit to the jury questions on the issues of:

(A) support under Chapter 154 or Chapter 159;

(B) a specific term or condition of possession of or access to the child; or

(C) any right or duty of a conservator, other than the determination of which joint managing conservator has the exclusive right to designate the primary residence of the child under Subdivision (1)(D).

(d) The Department of Family and Protective Services in collaboration with interested parties, including the Permanent Judicial Commission for Children, Youth and Families, shall review the form of jury submissions in this state and make recommendations to the legislature not later than December 31, 2017, regarding whether broad-form or specific jury questions should be required in suits affecting the parent-child relationship filed by the department. This subsection expires September 1, 2019.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 180, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 821, Sec. 2.10, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 1036, Sec. 2, 22, eff. Sept. 1, 2003; Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 6, eff. Sept. 1, 2017.

ANNOTATIONS

Danet v. Bhan, 436 S.W.3d 793, 796 (Tex. 2014). "A jury verdict in a custody determination case is binding on the trial court if the evidence supports it. The jury's decision is entitled to substantial deference on appeal and is subject to ordinary evidentiary sufficiency review."

Lenz v. Lenz, 79 S.W.3d 10, 20 (Tex. 2002). A trial court may not impose a geographic restriction in a joint managing conservatorship when the geographic restriction contravenes a jury verdict that is supported by evidence.

Martin v. Martin, 776 S.W.2d 572, 574 (Tex. 1989). A party does not have an absolute right to a jury trial as to terms and conditions of conservatorship and access.

In re C.R.S., 310 S.W.3d 897, 898 (Tex. App.—San Antonio 2010, orig. proceeding). A trial court must specify the reasons why it grants a new trial and disregards a jury verdict in contravention of subsection 105.002(c)(1).

In re S.M.D., 329 S.W.3d 8, 22 (Tex. App.—San Antonio 2010, pet. dism'd). A jury has the power to impose a geographic restriction on a sole managing conservator.

Sec. 105.003. PROCEDURE FOR CONTESTED HEARING

(a) Except as otherwise provided by this title, proceedings shall be as in civil cases generally.

(b) On the agreement of all parties to the suit, the court may limit attendance at the hearing to only those persons who have a direct interest in the suit or in the work of the court.

(c) A record shall be made as in civil cases generally unless waived by the parties with the consent of the court.

(d) When information contained in a report, study, or examination is before the court, the person making the report, study, or examination is subject to both direct examination and cross-examination as in civil cases generally.

(e) The hearing may be adjourned from time to time.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Stubbs v. Stubbs, 685 S.W.2d 643, 645 (Tex.1985). In a SAPCR, "all oral testimony must be recorded. It is the responsibility of the trial judge to see that the court reporter performs this duty."

In re M.E.P., No. 2-05-148-CV, 2006 WL 417096 (Tex. App.—Forth Worth 2006, no pet.) (mem. op.). Default judgment that modified child support and awarded attorney's fees was reversed for lack of a court reporter's record.

Sec. 105.004. PREFERENTIAL SETTING

After a hearing, the court may:

(1) grant a motion filed by a party or by the amicus attorney or attorney ad litem for the child for a preferential setting for a trial on the merits; and

(2) give precedence to that hearing over other civil cases if the court finds that the delay created by ordinary scheduling practices will unreasonably affect the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 16, eff. September 1, 2005.

Sec. 105.005. FINDINGS

Except as otherwise provided by this title, the court's findings shall be based on a preponderance of the evidence.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 105.006. CONTENTS OF FINAL ORDER

(a) A final order, other than in a proceeding under Chapter 161 or 162, must contain:

(1) the social security number and driver's license number of each party to the suit, including the child, except that the child's social security number or driver's license number is not required if the child has not been assigned a social security number or driver's license number; and

(2) each party's current residence address, mailing address, home telephone number, name of employer, address of employment, and work telephone number, except as provided by Subsection (c).

(b) Except as provided by Subsection (c), the court shall order each party to inform each other party, the court that rendered the order, and the state case registry under Chapter 234 of an intended change in any of the information required by this section as long as any person, as a result of the order, is under an obligation to pay child support or is entitled to possession of or access to a child. The court shall order that notice of the intended change be given at the earlier of:

(1) the 60th day before the date the party intends to make the change; or

(2) the fifth day after the date that the party knew of the change, if the party did not know or could not have known of the change in sufficient time to comply with Subdivision (1).

(c) If a court finds after notice and hearing that requiring a party to provide the information required by this section to another party is likely to cause the child or a conservator harassment, abuse, serious harm, or injury, or to subject the child or a conservator to family violence, as defined by Section 71.004, the court may:

(1) order the information not to be disclosed to another party; or

(2) render any other order the court considers necessary.

(d) An order in a suit that orders child support or possession of or access to a child must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:

"FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS."

"FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY NOT RECEIVING CREDIT FOR MAKING THE PAYMENT."

"FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY."

(e) Except as provided by Subsection (c), an order in a suit that orders child support or possession of or access to a child must also contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:

"EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE

PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE."

"THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD."

"FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS."

(e–1) An order in a suit that provides for the possession of or access to a child must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

(e–2) An order in a suit that orders child support must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"THE COURT MAY MODIFY THIS ORDER THAT PROVIDES FOR THE SUPPORT OF A CHILD, IF:

(1) THE CIRCUMSTANCES OF THE CHILD OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR

(2) IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR $100 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES."

(f) Except for an action in which contempt is sought, in any subsequent child support enforcement action, the court may, on a showing that diligent effort has been made to determine the location of a party, consider due process requirements for notice and service of process to be met with respect to that

party on delivery of written notice to the most recent residential or employer address filed by that party with the court and the state case registry.

(g) The Title IV-D agency shall promulgate and provide forms for a party to use in reporting to the court and the state case registry under Chapter 234 the information required under this section.

(h) The court may include in a final order in a suit in which a party to the suit makes an allegation of child abuse or neglect a finding on whether the party who made the allegation knew that the allegation was false. This finding shall not constitute collateral estoppel for any criminal proceeding. The court may impose on a party found to have made a false allegation of child abuse or neglect any civil sanction permitted under law, including attorney's fees, costs of experts, and any other costs.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 13, 128, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 786, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(21), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 178, Sec. 5, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 133, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 184, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 3, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 280 (H.B. 826), Sec. 1, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 3, eff. September 1, 2015.

ANNOTATIONS

In re Office of the Attorney General of Texas, 456 S.W.3d 153, 156–57 (Tex. 2015). "The Legislature has chosen to give OAG discretion to designate a case with the family violence indicator, and has not chosen to allow trial courts to intervene, except to weigh the designation in considering a request for disclosure. . . . Taken out of context, [subsection 105.006(c)(2)'s] 'any other order' language might seem a sweeping provision of power, giving a trial court carte blanche to do as it pleases. But studied in context . . . there is no question that 'any other order' cannot [grant discretion over the existence of the indicator]. Rather, a trial court may issue 'any other order' only to protect the parties likely to be harmed by disclosure of protected information. The trial court's misreading of subsection (c)(2) is foreclosed by statutory context because subsection (c)(2) is clearly limited to the risks of harm noted in subsection (c). . . . In effect, the trial court in this case decided that the family violence indicator was not necessary and determined that it should be removed. But the trial court lacked authority to order OAG to remove the indicator from it files. OAG is assigned the indicator designation; the trial court is responsible for weighing that designation when asked to disclose protected information. These two lines do not intersect."

Sec. 105.007. COMPLIANCE WITH ORDER REQUIRING NOTICE OF CHANGE OF REQUIRED INFORMATION

(a) A party shall comply with the order by giving written notice to each other party of an intended change in the party's current residence address, mailing address, home telephone number, name of employer, address of employment, and work telephone number.

(b) The party must give written notice by registered or certified mail of an intended change in the required information to each other party on or before the 60th day before the change is made. If the party does not know or could not have known of the change in sufficient time to provide 60-day notice, the party shall provide the written notice of the change on or before the fifth day after the date that the party knew of the change.

(c) The court may waive the notice required by this section on motion by a party if it finds that the giving of notice of a change of the required information would be likely to expose the child or the party to harassment, abuse, serious harm, or injury.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 14, eff. Sept. 1, 1995.

Sec. 105.008. RECORD OF SUPPORT ORDER FOR STATE CASE REGISTRY

(a) The clerk of the court shall provide the state case registry with a record of a court order for child support. The record of an order shall include information provided by the parties on a form developed by the Title IV-D agency. The form shall be completed by the petitioner and submitted to the clerk at the time the order is filed for record.

(b) To the extent federal funds are available, the Title IV-D agency shall reimburse the clerk of the court for the costs incurred in providing the record of support order required under this section.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 7, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 5, eff. June 18, 2005.

Sec. 105.009. PARENT EDUCATION AND FAMILY STABILIZATION COURSE

(a) In a suit affecting the parent-child relationship, including an action to modify an order in a suit affecting the parent-child relationship providing for possession of or access to a child, the court may order the parties to the suit to attend a parent education and family stabilization course if the court determines that the order is in the best interest of the child.

(b) The parties to the suit may not be required to attend the course together. The court, on its own motion or the motion of either party, may prohibit the parties from taking the course together if there is a history of family violence in the marriage.

(c) A course under this section must be at least four hours, but not more than 12 hours, in length and be designed to educate and assist parents with regard to the consequences of divorce on parents and children. The course must include information on the following issues:

(1) the emotional effects of divorce on parents;

(2) the emotional and behavioral reactions to divorce by young children and adolescents;

(3) parenting issues relating to the concerns and needs of children at different development stages;

(4) stress indicators in young children and adolescents;

(5) conflict management;

(6) family stabilization through development of a coparenting relationship;

(7) the financial responsibilities of parenting;

(8) family violence, spousal abuse, and child abuse and neglect; and

(9) the availability of community services and resources.

(d) A course may not be designed to provide individual mental health therapy or individual legal advice.

(e) A course satisfies the requirements of this section if it is offered by:

(1) a mental health professional who has at least a master's degree with a background in family therapy or parent education; or

(2) a religious practitioner who performs counseling consistent with the laws of this state or another person designated as a program counselor by a church or religious institution if the litigant so chooses.

(f) Information obtained in a course or a statement made by a participant to a suit during a course may not be considered in the adjudication of the suit or in any subsequent legal proceeding. Any report that results from participation in the course may not become a record in the suit unless the parties stipulate to the record in writing.

(g) The court may take appropriate action with regard to a party who fails to attend or complete a course ordered by the court under this section, including holding the party in contempt of court, striking pleadings, or invoking any sanction provided by Rule 215, Texas Rules of Civil Procedure. The failure or refusal by a party to attend or complete a course required by this section may not delay the court from rendering a judgment in a suit affecting the parent-child relationship.

(h) The course required under this section may be completed by:

(1) personal instruction;

(2) videotape instruction;

(3) instruction through an electronic medium; or

(4) a combination of those methods.

(i) On completion of the course, the course provider shall issue a certificate of completion to each participant. The certificate must state:

(1) the name of the participant;

(2) the name of the course provider;

(3) the date the course was completed; and

(4) whether the course was provided by:

(A) personal instruction;

(B) videotape instruction;

(C) instruction through an electronic medium; or

(D) a combination of those methods.

(j) The county clerk in each county may establish a registry of course providers in the county and a list of locations at which courses are provided. The clerk shall include information in the registry identifying courses that are offered on a sliding fee scale or without charge.

(k) The court may not order the parties to a suit to attend a course under this section if the parties cannot afford to take the course. If the parties cannot afford to take a course, the court may direct the parties to a course that is offered on a sliding fee scale or without charge, if a course of that type is available. A party to a suit may not be required to pay more than $100 to attend a course ordered under this section.

(l) A person who has attended a course under this section may not be required to attend the course more than twice before the fifth anniversary of the date the person completes the course for the first time.

Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 916 (H.B. 260), Sec. 6

(m) A course under this section must be available in both English and Spanish.

Text of subsection as added by Acts 2005, 79th Leg., R.S., Ch. 1171 (H.B. 3531), Sec. 3

(m) A course under this section in a suit filed in a county with a population of more than two million that is adjacent to a county with a population of more than one million must be available in both English and Spanish.

Added by Acts 1999, 76th Leg., ch. 946, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 6, eff. June 18, 2005. Acts 2005, 79th Leg., Ch. 1171 (H.B. 3531), Sec. 3, eff. October 1, 2005.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 106. COSTS AND ATTORNEY'S FEES

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Sec. 106.002. ATTORNEY'S FEES AND EXPENSES 371

Sec. 106.001. COSTS

The court may award costs in a suit or motion under this title and in a habeas corpus proceeding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 15, Sec. 1, eff. Sept. 1, 1997.

ANNOTATIONS

Ex parte Williams, 866 S.W.2d 751, 753 (Tex. App.—Houston [1st Dist.] 1993, orig. proceeding). "Costs" usually refer to fees and charges required by law to be paid to the courts or some of their officers, the amount of which is fixed by statute or the court's rules, such as filing and service fees.

In re R.M.H., 843 S.W.2d 740, 742 (Tex. App.—Corpus Christi 1992, no writ). An award of costs is discretionary with the trial court.

Gross v. Gross, 808 S.W.2d 215, 221 (Tex. App.—Houston [14th Dist.] 1991, writ denied). The Family Code's provisions related to costs and attorney's fees were intended to supplant like provisions in the Texas Rules of Civil Procedure.

Sec. 106.002. ATTORNEY'S FEES AND EXPENSES

(a) In a suit under this title, the court may render judgment for reasonable attorney's fees and expenses and order the judgment and postjudgment interest to be paid directly to an attorney.

(b) A judgment for attorney's fees and expenses may be enforced in the attorney's name by any means available for the enforcement of a judgment for debt.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 15, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 478, Sec. 1, eff. Sept. 1, 2003.

ANNOTATIONS

Raggio & Raggio, Inc. v. Hudson (In re Hudson), 182 B.R. 741, 746–47 (Bankr. N.D. Tex. 1995), *aff'd*, 107 F.3d 355 (5th Cir. 1997). Attorney's fees may be awarded as necessaries in a SAPCR.

Tedder v. Gardner Aldrich, LLP, 421 S.W.3d 651 (Tex. 2013). A spouse's legal fees in a divorce proceeding are not necessaries.

Guimaraes v. Brann, 562 S.W.3d 521 (Tex. App.—Houston [1st Dist.] 2018, pet. filed). Court found evidence sufficient for award of attorney's fees. To support an award of attorney's fees, evidence generally should be presented on the hours spent on the case, the nature of preparation, complexity of the case, experience of the attorney, and the prevailing hourly rates in the community. But evidence on each factor is not necessary to determine a reasonable award. The trial court also may consider the entire record and the common knowledge of the participants as lawyers and judges in making its determination.

In re R.E.S., 482 S.W.3d 584, 586–87 (Tex. App.—San Antonio 2015, no pet.). The prevailing party determination is one factor in a trial court's award of attorney's fees and is neither conclusive nor decisive.

Coburn v. Moreland, 433 S.W.3d 809, 840 (Tex. App.—Austin 2014, no pet.). Although success on the merits and good cause may be relevant in considering whether a trial court abused its discretion in awarding one party its attorney's fees in a SAPCR, those are not compulsory requirements.

Diaz v. Diaz, 350 S.W.3d 251, 256 (Tex. App.—San Antonio 2011, pet. denied). The Family Code's provisions related to costs and attorney's fees were intended to supplant like provisions in the Texas Rules of Civil Procedure. An award of attorney's fees and expenses is discretionary with the trial court.

In re A.S.G., 345 S.W.3d 443, 451 (Tex. App.—San Antonio 2011, no pet.). The court of appeals upheld an award of $1,000 in attorney's fees to a mother, even though her attorney failed to testify as to her hourly rate or number of hours worked on the case. The mother's attorney requested $1,500 for a motion to enforce child support and contempt for

nonpayment. She explained the work she performed in the case, the history of the case, and the need for repeated enforcement proceedings.

Moroch v. Collins, 174 S.W.3d 849, 870–71 (Tex. App.—Dallas 2005, pet. denied). This section allows an award of attorney's fees in a SAPCR; it does not require that conservatorship be at issue before an award can be made. The fact that the award of attorney's fees exceeded the size of the community estate did not invalidate the award because the trial court did not make the award as part of a just and right division of the community estate; rather, the trial court made the award pursuant to this section because the court tried a SAPCR along with the divorce suit.

In re K.L.R., 162 S.W.3d 291, 311 (Tex. App.—Tyler 2005, no pet.). A trial court did not abuse its discretion when it awarded attorney's fees to a father when the mother had run up the cost of litigation by delaying the case and refusing to comply with court orders.

Finley v. May, 154 S.W.3d 196, 199 (Tex. App.—Austin 2004, no pet.). Attorney's fees cannot be awarded as child support unless the fees result from an enforcement of child support.

London v. London, 94 S.W.3d 139, 146–47 (Tex. App.—Houston [14th Dist.] 2002, no pet.). A trial court abused its discretion in awarding $40,000 in attorney's fees to a wife when she failed to present evidence as to the hourly rates of her attorneys, the number of hours they worked, and the reasonableness and necessity of their fees.

Nordstrom v. Nordstrom, 965 S.W.2d 575, 583–84 (Tex. App.—Houston [1st Dist.] 1997, pet. denied), *cert. denied*, 525 U.S. 1142 (1999). A trial court did not abuse its discretion in awarding attorney's fees to an ex-husband, even though the ex-wife prevailed in modifying child support, when the parties agreed on the amount of child support before trial and the ex-wife did not prevail on her claims for a retroactive increase in support, contempt of court, a money judgment for unpaid medical insurance, and expenses and attorney's fees incurred on those claims.

Klaver v. Klaver, 764 S.W.2d 401, 405 (Tex. App.—Fort Worth 1989, no writ). A prayer for general relief is not sufficient to support an award of attorney's fees.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

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SUBCHAPTER A. COURT-ORDERED REPRESENTATION IN SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

Sec. 107.001. DEFINITIONS

In this chapter:

(1) "Amicus attorney" means an attorney appointed by the court in a suit, other than a suit filed by a governmental entity, whose role is to provide legal services necessary to assist the court in protecting a child's best interests rather than to provide legal services to the child.

(2) "Attorney ad litem" means an attorney who provides legal services to a person, including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent representation.

(3) "Developmentally appropriate" means structured to account for a child's age, level of education, cultural background, and degree of language acquisition.

(4) "Dual role" means the role of an attorney who is appointed under Section 107.0125 to act as both guardian ad litem and attorney ad litem for a child in a suit filed by a governmental entity.

(5) "Guardian ad litem" means a person appointed to represent the best interests of a child. The term includes:

(A) a volunteer advocate from a charitable organization described by Subchapter C who is appointed by the court as the child's guardian ad litem;

(B) a professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child's best interests;

(C) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(D) an attorney ad litem appointed to serve in the dual role.

Amended by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.031, eff. April 2, 2015.

COMMENTS

The appointment of an amicus attorney may be made only in private cases as opposed to TDFPS cases.

Sec. 107.002. POWERS AND DUTIES OF GUARDIAN AD LITEM FOR CHILD

(a) A guardian ad litem appointed for a child under this chapter is not a party to the suit but may:

(1) conduct an investigation to the extent that the guardian ad litem considers necessary to determine the best interests of the child; and

(2) obtain and review copies of the child's relevant medical, psychological, and school records as provided by Section 107.006.

(b) A guardian ad litem appointed for the child under this chapter shall:

(1) within a reasonable time after the appointment, interview:

(A) the child in a developmentally appropriate manner, if the child is four years of age or older;

(B) each person who has significant knowledge of the child's history and condition, including educators, child welfare service providers, and any foster parent of the child; and

(C) the parties to the suit;

(2) seek to elicit in a developmentally appropriate manner the child's expressed objectives;

(3) consider the child's expressed objectives without being bound by those objectives;

(4) encourage settlement and the use of alternative forms of dispute resolution; and

(5) perform any specific task directed by the court.

(b–1) In addition to the duties required by Subsection (b), a guardian ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall:

(1) review the medical care provided to the child;

(2) in a developmentally appropriate manner, seek to elicit the child's opinion on the medical care provided; ~~and~~

(3) for a child at least 16 years of age, ascertain whether the child has received the following documents:

(A) a certified copy of the child's birth certificate;

(B) a social security card or a replacement social security card;

(C) a driver's license or personal identification certificate under Chapter 521, Transportation Code; and

(D) any other personal document the Department of Family and Protective Services determines appropriate**; and**

(4) seek to elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child and immediately provide the names of those individuals to the Department of Family and Protective Services.

(c) A guardian ad litem appointed for the child under this chapter is entitled to:

(1) receive a copy of each pleading or other paper filed with the court in the case in which the guardian ad litem is appointed;

(2) receive notice of each hearing in the case;

(3) participate in case staffings by the Department of Family and Protective Services concerning the child;

(4) attend all legal proceedings in the case but may not call or question a witness or otherwise provide legal services unless the guardian ad litem is a licensed attorney who has been appointed in the dual role;

(5) review and sign, or decline to sign, an agreed order affecting the child;

(6) explain the basis for the guardian ad litem's opposition to the agreed order if the guardian ad litem does not agree to the terms of a proposed order;

(7) have access to the child in the child's placement;

(8) be consulted and provide comments on decisions regarding placement, including kinship, foster care, and adoptive placements;

(9) evaluate whether the child welfare services providers are protecting the child's best interests regarding appropriate care, treatment, services, and all other foster children's rights listed in Section 263.008;

(10) receive notification regarding and an invitation to attend meetings related to the child's service plan and a copy of the plan; and

(11) attend court-ordered mediation regarding the child's case.

(d) The court may compel the guardian ad litem to attend a trial or hearing and to testify as necessary for the proper disposition of the suit.

(e) Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad litem has an opportunity to testify regarding, and is permitted to submit a report regarding, the guardian ad litem's recommendations relating to:

(1) the best interests of the child; and

(2) the bases for the guardian ad litem's recommendations.

(f) In a nonjury trial, a party may call the guardian ad litem as a witness for the purpose of cross-examination regarding the guardian's report without the guardian ad litem being listed as a witness by a party. If the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative.

(g) In a contested case, the guardian ad litem shall provide copies of the guardian ad litem's report, if any, to the attorneys for the parties as directed by the court, but not later than the earlier of:

(1) the date required by the scheduling order; or

(2) the 10th day before the date of the commencement of the trial.

(h) Disclosure to the jury of the contents of a guardian ad litem's report to the court is subject to the Texas Rules of Evidence.

(i) A guardian ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall, before each scheduled hearing under Chapter 263, determine whether the child's educational needs and goals have been identified and addressed.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 943, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 1, eff. September 1, 2005. Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 1, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 688 (H.B. 2619), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.032, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 7, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 2, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 937 (S.B. 1758), Sec. 1, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 3390, Sec. 1, eff. May 27, 2019.

ANNOTATIONS

In re Scheller, 325 S.W.3d 640 (Tex. 2010, orig. proceeding) (per curiam). A court is allowed to appoint one person as both an expert psychologist and as a guardian ad litem, as both roles are to inform the court of what is in the child's best interest.

Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD AND AMICUS ATTORNEY

(a) An attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court:

(1) shall:

(A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

(i) the child in a developmentally appropriate manner, if the child is four years of age or older;

(ii) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and

(iii) the parties to the suit;

(B) seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;

(C) consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court;

(D) investigate the facts of the case to the extent the attorney considers appropriate;

(E) obtain and review copies of relevant records relating to the child as provided by Section 107.006;

(F) participate in the conduct of the litigation to the same extent as an attorney for a party;

(G) take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings;

(H) encourage settlement and the use of alternative forms of dispute resolution; and

(I) review and sign, or decline to sign, a proposed or agreed order affecting the child;

(2) must be trained in child advocacy or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

(A) request clarification from the court if the role of the attorney is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the child by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing concerning the child conducted by the Department of Family and Protective Services; and

(G) attend all legal proceedings in the suit.

(b) In addition to the duties required by Subsection (a), an attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall:

(1) review the medical care provided to the child;

(2) in a developmentally appropriate manner, seek to elicit the child's opinion on the medical care provided; ~~and~~

(3) for a child at least 16 years of age:

(A) advise the child of the child's right to request the court to authorize the child to consent to the child's own medical care under Section 266.010; and

(B) ascertain whether the child has received the following documents:

(i) a certified copy of the child's birth certificate;

(ii) a social security card or a replacement social security card;

(iii) a driver's license or personal identification certificate under Chapter 521, Transportation Code; and

(iv) any other personal document the Department of Family and Protective Services determines appropriate; **and**

(4) seek to elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child and immediately provide the names of those individuals to the Department of Family and Protective Services.

Added by Acts 1997, 75th Leg., ch. 1294, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 2, eff. September 1, 2005. Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 2, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.033, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 3, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 937 (S.B. 1758), Sec. 2, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 3390, Sec. 2, eff. May 27, 2019.

PRACTICE TIPS

In fulfilling the obligations under this section and especially with regard to "interviewing the parties," the practitioner is reminded of an attorney's obligation under the Texas Disciplinary Rules of Professional Conduct not to speak to a party represented by counsel without counsel's consent. It is suggested that consent be in writing.

ANNOTATIONS

In re Collins, 242 S.W.3d 837, 847 (Tex. App.—Houston [14th Dist.] 2007, orig. proceeding). This section does not authorize an amicus attorney to serve as next friend in other lawsuits or to expedite a SAPCR by using powers not conferred by statute.

Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR CHILD

(a) Except as otherwise provided by this chapter, the attorney ad litem appointed for a child shall, in a developmentally appropriate manner:

(1) advise the child;

(2) represent the child's expressed objectives of representation and follow the child's expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem; and

(3) as appropriate, considering the nature of the appointment, become familiar with the American Bar Association's standards of practice for attorneys who represent children in

abuse and neglect cases, the suggested amendments to those standards adopted by the National Association of Counsel for Children, and the American Bar Association's standards of practice for attorneys who represent children in custody cases.

(b) An attorney ad litem appointed for a child in a proceeding under Subtitle E shall complete at least three hours of continuing legal education relating to representing children in child protection cases as described by Subsection (c) as soon as practicable after the attorney ad litem is appointed. An attorney ad litem is not required to comply with this subsection if the court finds that the attorney ad litem has experience equivalent to the required education.

(b–1) An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a child in a child protection case must complete at least three hours of continuing legal education relating to the representation of a child in a proceeding under Subtitle E each year before the anniversary date of the attorney's listing.

(c) The continuing legal education required by Subsections (b) and (b–1) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, representing a child in a proceeding under Subtitle E.

(d) Except as provided by Subsection (e), an attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall:

(1) meet before each court hearing with:

(A) the child, if the child is at least four years of age; or

(B) the individual with whom the child ordinarily resides, including the child's parent, conservator, guardian, caretaker, or custodian, if the child is younger than four years of age; and

(2) if the child or individual is not present at the court hearing, file a written statement with the court indicating that the attorney ad litem complied with Subdivision (1).

(d–1) A meeting required by Subsection (d) must take place:

(1) a sufficient time before the hearing to allow the attorney ad litem to prepare for the hearing in accordance with the child's expressed objectives of representation; and

(2) in a private setting that allows for confidential communications between the attorney ad litem and the child or individual with whom the child ordinarily resides, as applicable.

(d–2) An attorney ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall, before each scheduled hearing under Chapter 263, determine whether the child's educational needs and goals have been identified and addressed.

(d–3) An attorney ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall periodically continue to review the child's safety and well-being, including any effects of trauma to the child, and take appropriate action, including requesting a review hearing when necessary to address an issue of concern.

(e) An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 is not required to comply with Subsection (d) before a hearing if the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance with that subsection is not feasible or in the best interest of the child. Additionally, a court may, on a showing of good cause, autho-

rize an attorney ad litem to comply with Subsection (d) by conferring with the child or other individual, as appropriate, by telephone or video conference.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 3, eff. September 1, 2005. Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.04(a), eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 310 (H.B. 1972), Sec. 1, eff. June 15, 2007. Acts 2011, 82nd Leg., R.S., Ch. 572 (H.B. 3311), Sec. 1, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 573 (H.B. 3314), Sec. 1, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 688 (H.B. 2619), Sec. 2, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 1, eff. September 1, 2013. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 8, eff. Sept. 1, 2017.

COMMENTS

The main difference between an attorney ad litem and an amicus attorney is that the attorney ad litem establishes an attorney-client relationship with the child. The attorney ad litem is bound to follow the child's desires and to keep privileged that which the child directs the attorney to keep privileged. The amicus attorney, on the other hand, does not have an attorney-client relationship with the child. The amicus attorney may share information, irrespective of the desires of the child, but while taking into consideration the desires of the child may pursue what he or she believes to be in the child's best interest.

ANNOTATIONS

J.R. v. Texas Department of Family & Protective Services, No. 03-15-00108-CV, 2015 WL 4603943 (Tex. App.—Austin July 30, 2015, pet. denied) (mem. op.). Father argued that attorney ad litem failed to express child's desire to live with him and breached his duty to represent child's expressed objectives of representation in developmentally appropriate manner. Court of appeals held that father did not have standing to complain about alleged deficiencies in the representation of his child.

Sec. 107.0045. DISCIPLINE OF ATTORNEY AD LITEM

An attorney ad litem who fails to perform the duties required by Sections 107.003 and 107.004 is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.05, eff. September 1, 2005.

Sec. 107.005. ADDITIONAL DUTIES OF AMICUS ATTORNEY

(a) Subject to any specific limitation in the order of appointment, an amicus attorney shall advocate the best interests of the child after reviewing the facts and circumstances of the case. Notwithstanding Subsection (b), in determining the best interests of the child, an amicus attorney is not bound by the child's expressed objectives of representation.

(b) An amicus attorney shall, in a developmentally appropriate manner:

(1) with the consent of the child, ensure that the child's expressed objectives of representation are made known to the court;

(2) explain the role of the amicus attorney to the child;

(3) inform the child that the amicus attorney may use information that the child provides in providing assistance to the court; and

(4) become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases.

(c) An amicus attorney may not disclose confidential communications between the amicus attorney and the child unless the amicus attorney determines that disclosure is necessary to assist the court regarding the best interests of the child.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 4, eff. September 1, 2005.

ANNOTATIONS

In re S.A.G., 403 S.W.3d 907 (Tex. App.—Texarkana 2013, pet. denied). Even if a grandmother divulged privileged information to an amicus attorney who was appointed by trial court, the grandmother waived any attorney-client or work-product privileges she may have had by participating in discussions with the amicus attorney, in proceedings on the grandmother's petition for appointment as joint managing conservator of her grandchild.

Sec. 107.006. ACCESS TO CHILD AND INFORMATION RELATING TO CHILD

(a) In conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to the child and any information relating to the child.

(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social services, law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).

(c) Without requiring a further order or release, the custodian of a medical, mental health, or drug or alcohol treatment record of a child that is privileged or confidential under other law shall release the record to a person authorized to access the record under Subsection (a), except that a child's drug or alcohol treatment record that is confidential under 42 U.S.C. Section 290dd–2 may only be released as provided under applicable federal regulations.

(d) The disclosure of a confidential record under this section does not affect the confidentiality of the record, and the person provided access to the record may not disclose the record further except as provided by court order or other law.

(e) Notwithstanding the provisions of this section, the requirements of Section 159.008, Occupations Code, apply.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 904, Sec. 1, eff. September 1, 2013.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 11, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1294, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 5, eff. September 1, 2005. Acts 2011, 82nd Leg., R.S., Ch. 206 (H.B. 2488), Sec. 1, eff. May 30, 2011. Acts 2013, 83rd Leg., R.S., Ch. 904 (H.B. 1185), Sec. 1, eff. September 1, 2013.

PRACTICE TIPS

The practitioner should ensure that the order of appointment contains language from this section to authorize the guardian ad litem or amicus attorney to receive the child's medical records.

Sec. 107.007. ATTORNEY WORK PRODUCT AND TESTIMONY

(a) An attorney ad litem, an attorney serving in the dual role, or an amicus attorney may not:

(1) be compelled to produce attorney work product developed during the appointment as an attorney;

(2) be required to disclose the source of any information;

(3) submit a report into evidence; or

(4) testify in court except as authorized by Rule 3.08, Texas Disciplinary Rules of Professional Conduct.

(b) Subsection (a) does not apply to the duty of an attorney to report child abuse or neglect under Section 261.101.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.008. SUBSTITUTED JUDGMENT OF ATTORNEY FOR CHILD

(a) An attorney ad litem appointed to represent a child or an attorney appointed in the dual role may determine that the child cannot meaningfully formulate the child's objectives of representation in a case because the child:

(1) lacks sufficient maturity to understand and form an attorney-client relationship with the attorney;

(2) despite appropriate legal counseling, continues to express objectives of representation that would be seriously injurious to the child; or

(3) for any other reason is incapable of making reasonable judgments and engaging in meaningful communication.

(b) An attorney ad litem or an attorney appointed in the dual role who determines that the child cannot meaningfully formulate the child's expressed objectives of representation may present to the court a position that the attorney determines will serve the best interests of the child.

(c) If a guardian ad litem has been appointed for the child in a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, an attorney ad litem who determines that the child cannot meaningfully formulate the child's expressed objectives of representation:

(1) shall consult with the guardian ad litem and, without being bound by the guardian ad litem's opinion or recommendation, ensure that the guardian ad litem's opinion and basis for any recommendation regarding the best interests of the child are presented to the court; and

(2) may present to the court a position that the attorney determines will serve the best interests of the child.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 6, eff. September 1, 2005.

Sec. 107.009. IMMUNITY

(a) A guardian ad litem, an attorney ad litem, a child custody evaluator, or an amicus attorney appointed under this chapter is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of guardian ad litem, attorney ad litem, child custody evaluator, or amicus attorney.

(b) Subsection (a) does not apply to an action taken, a recommendation made, or an opinion given:

(1) with conscious indifference or reckless disregard to the safety of another;

(2) in bad faith or with malice; or

(3) that is grossly negligent or wilfully wrongful.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 7, eff. September 1, 2005. Acts 2017, 85th Leg., R.S., Ch. 257 (H.B. 1501), Sec. 1, eff. Sept. 1, 2017.

ANNOTATIONS

Tanner v. Black, 464 S.W.3d 23 (Tex. App.—Houston [1st Dist.] 2015, no pet.). Immunity for actions taken in the capacity of a guardian ad litem, attorney ad litem, or amicus attorney under statute governing court-ordered representation in SAPCRs is an affirmative defense.

Zeifman v. Nowlin, 322 S.W.3d 804, 807 (Tex. App.—Austin 2010, no pet.). Guardians, attorneys ad litem, and amicus attorneys are immune from damages for actions taken in their respective capacities unless those actions fall into one of the statutory exceptions. Guardians, attorneys ad litem, and amicus attorneys owe duties to the child and not to either parent.

Sec. 107.010. Discretionary Appointment of Attorney Ad Litem for Incapacitated Person

The court may appoint an attorney to serve as an attorney ad litem for a person entitled to service of citation in a suit if the court finds that the person is incapacitated. The attorney ad litem shall follow the person's expressed objectives of representation and, if appropriate, refer the proceeding to the proper court for guardianship proceedings.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER B. APPOINTMENTS IN CERTAIN SUITS

PART 1. APPOINTMENTS IN SUITS BY GOVERNMENTAL ENTITY

Sec. 107.011. Mandatory Appointment of Guardian Ad Litem

(a) Except as otherwise provided by this subchapter, in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child, the court shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the full adversary hearing.

(b) The guardian ad litem appointed for a child under this section may be:

(1) a charitable organization composed of volunteer advocates or an individual volunteer advocate appointed under Subchapter C;

(2) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or

(3) an attorney appointed in the dual role.

(c) The court may not appoint a guardian ad litem in a suit filed by a governmental entity if an attorney is appointed in the dual role unless the court appoints another person to serve as guardian ad litem for the child and restricts the role of the attorney to acting as an attorney ad litem for the child.

(d) The court may appoint an attorney to serve as guardian ad litem for a child without appointing the attorney to serve in the dual role only if the attorney is specifically appointed to serve only in the role of guardian ad litem. An attorney appointed solely as a guardian ad litem:

(1) may take only those actions that may be taken by a nonattorney guardian ad litem; and

(2) may not:

(A) perform legal services in the case; or

(B) take any action that is restricted to a licensed attorney, including engaging in discovery other than as a witness, making opening and closing statements, or examining witnesses.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.012. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR CHILD

In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full adversary hearing, to ensure adequate representation of the child.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.0125. APPOINTMENT OF ATTORNEY IN DUAL ROLE

(a) In order to comply with the mandatory appointment of a guardian ad litem under Section 107.011 and the mandatory appointment of an attorney ad litem under Section 107.012, the court may appoint an attorney to serve in the dual role.

(b) If the court appoints an attorney to serve in the dual role under this section, the court may at any time during the pendency of the suit appoint another person to serve as guardian ad litem for the child and restrict the attorney to acting as an attorney ad litem for the child.

(c) An attorney appointed to serve in the dual role may request the court to appoint another person to serve as guardian ad litem for the child. If the court grants the attorney's request, the attorney shall serve only as the attorney ad litem for the child.

(d) Unless the court appoints another person as guardian ad litem in a suit filed by a governmental entity, an appointment of an attorney to serve as an attorney ad litem in a suit filed by a governmental entity is an appointment to serve in the dual role regardless of the terminology used in the appointing order.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.013. MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR PARENT

(a) In a suit filed by a governmental entity under Subtitle E in which termination of the parent-child relationship or the appointment of a conservator for a child is requested, the court shall appoint an attorney ad litem to represent the interests of:

(1) an indigent parent of the child who responds in opposition to the termination or appointment;

(2) a parent served by citation by publication;

(3) an alleged father who failed to register with the registry under Chapter 160 and whose identity or location is unknown; and

(4) an alleged father who registered with the paternity registry under Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.

(a–1) In a suit described by Subsection (a), if a parent is not represented by an attorney at the parent's first appearance in court, the court shall inform the parent of:

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

(2) if the parent is indigent and appears in opposition to the suit, the right to an attorney ad litem appointed by the court.

(b) If both parents of the child are entitled to the appointment of an attorney ad litem under this section and the court finds that the interests of the parents are not in conflict and that there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties, the court may appoint an attorney ad litem to represent the interests of both parents.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 810, Sec. 11, eff. September 1, 2013.

(d) The court shall require a parent who claims indigence under Subsection (a) to file an affidavit of indigence in accordance with Rule 145(b) of the Texas Rules of Civil Procedure before the court may conduct a hearing to determine the parent's indigence under this section. The court may consider additional evidence at that hearing, 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. If the court determines the parent is indigent, the court shall appoint an attorney ad litem to represent the parent.

(e) A parent who the court has determined is indigent for purposes of this section is presumed to remain indigent for the duration of the suit and any subsequent appeal unless the court, after reconsideration on the motion of the parent, the attorney ad litem for the parent, or the attorney representing the governmental entity, determines that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 821, Sec. 2.11, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.06, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 526 (S.B. 813), Sec. 1, eff. June 16, 2007. Acts 2011, 82nd Leg., R.S., Ch. 75 (H.B. 906), Sec. 1, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 2, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 11, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 128 (S.B. 1931), Sec. 1, eff. September 1, 2015.

ANNOTATIONS

In re P.M., No. 15-0171, 2016 WL 1274748 (Tex. Apr. 1, 2016). Indigent mother's right to counsel included the right to counsel to bring a petition for review in the Supreme Court, in termination of parental rights proceeding.

In re J.O.A., 283 S.W.3d 336 (Tex. 2009); *In re M.S.*, 115 S.W.3d 534 (Tex. 2003). The statutory right to counsel in parental rights termination cases embodies the right to effective counsel.

In re C.F., 565 S.W.3d 832 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). Trial court did not abuse its discretion by granting attorney ad litem's motion to withdraw as parent's counsel one day before trial in a proceeding for termination of parental rights. Attorney filed motion to withdraw one week before trial due to communication from mother the previous night suggesting mother wanted a different attorney; mother did not file a written response to the motion and did not express opposition at the hearing.

In re J.A.B., 562 S.W.3d 726 (Tex. App.—San Antonio 2018, pet. denied). Right to counsel guaranteed by the Family Code to an indigent parent in a government-initiated parental rights termination case includes effective assistance of counsel. To determine whether a parent received effective assistance of counsel in a termination of parental rights case, the court applies the standard of review set forth in *Strickland v. Washington*, 466 U.S. 668 (1984); a parent must establish by a preponderance of the evidence that: (1) trial counsel's performance fell below an objective standard of reasonableness, and (2) the parent was prejudiced by trial counsel's defective performance.

In re A.J., 559 S.W.3d 713 (Tex. App.—Tyler 2018, no pet.). Trial court's failure to admonish incarcerated father of his statutory right to counsel or timely appoint counsel before commencement violated due process in proceeding to terminate parental rights. Due process of law requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

In re P.M.W., 559 S.W.3d 215 (Tex. App.—Texarkana 2018, pet. denied). Failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim in a parental rights termination case. The court of appeals gives great deference to trial counsel's performance in a termination of parental rights case and indulges a strong presumption that his conduct falls within the wide range of reasonably professional assistance, including the possibility that his actions were strategic, in determining whether counsel was ineffective.

In re E.R.W., 528 S.W.3d 251 (Tex. App.—Houston [14th Dist.] 2017, no pet.). A nonindigent parent in a termination suit has a statutory right to representation by counsel. A nonindigent parent may challenge the trial court's termination of parental rights.

In re V.L.B., 445 S.W.3d 802, 805–06 (Tex. App.—Houston [1st Dist.] 2014, no pet.). A parent's filing of an affidavit of indigency triggers the process for mandatory appointment of an attorney ad litem in a termination of parental rights proceeding.

In re E.A.F., 424 S.W.3d 742 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). The appointment of an attorney ad litem is required in termination of parental rights proceedings whether or not the indigent parent requests an attorney.

Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR PARENT

(a) An attorney ad litem appointed under Section 107.013 to represent the interests of a parent:

(1) shall:

(A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

(i) the parent, unless the parent's location is unknown;

(ii) each person who has significant knowledge of the case; and

(iii) the parties to the suit;

(B) investigate the facts of the case;

(C) to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits:

(i) obtain and review copies of all court files in the suit during the attorney ad litem's course of representation; and

(ii) when necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan;

(D) take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;

(E) encourage settlement and the use of alternative forms of dispute resolution;

(F) review and sign, or decline to sign, a proposed or agreed order affecting the parent;

(G) meet before each court hearing with the parent, unless the court:

(i) finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance is not feasible; or

(ii) on a showing of good cause, authorizes the attorney ad litem to comply by conferring with the parent, as appropriate, by telephone or video conference;

(H) abide by the parent's objectives for representation;

(I) become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases; and

(J) complete at least three hours of continuing legal education relating to representing parents in child protection cases as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education; and

(2) is entitled to:

(A) request clarification from the court if the role of the attorney ad litem is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the parent by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing conducted by the Department of Family and Protective Services in which the parent is invited to participate, including, as appropriate, a case staffing to develop a family plan of service, a family group conference, a permanency conference, a mediation, a case staffing to plan for the discharge and return of the child to the parent, and any other case staffing that the department determines would be appropriate for the parent to attend, but excluding any internal department staffing or staffing between the department and the department's legal representative; and

(G) attend all legal proceedings in the suit.

(b) The continuing legal education required by Subsection (a)(1)(J) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, representing a parent in a proceeding under Subtitle E.

(c) An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a parent in a child protection case must complete at least three hours of continuing legal education relating to the representation of a parent in a proceeding under Subtitle E each year before the anniversary date of the attorney's listing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 647 (S.B. 1026), Sec. 1, eff. September 1, 2011. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 3, eff. September 1, 2013.

Sec. 107.0132. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR ALLEGED FATHER

(a) Except as provided by Subsections (b) and (d), an attorney ad litem appointed under Section 107.013 to represent the interests of an alleged father is only required to:

(1) conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Chapter 160;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and

(3) conduct an independent investigation to identify or locate the alleged father, as applicable.

(b) If the attorney ad litem identifies and locates the alleged father, the attorney ad litem shall:

(1) provide to each party and the court the alleged father's name and address and any other locating information; and

(2) if appropriate, request the court's approval for the attorney ad litem to assist the alleged father in establishing paternity.

(c) If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, the court may appoint the attorney ad litem to continue to represent the father's interests as a parent under Section 107.013(a)(1) or (c).

(d) If the attorney ad litem is unable to identify or locate the alleged father, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father. On receipt of the summary required by this subsection, the court shall discharge the attorney from the appointment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 647 (S.B. 1026), Sec. 1, eff. September 1, 2011. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 4, eff. September 1, 2013.

Sec. 107.0133. DISCIPLINE OF ATTORNEY AD LITEM FOR PARENT OR ALLEGED FATHER

An attorney ad litem appointed for a parent or an alleged father who fails to perform the duties required by Section 107.0131 or 107.0132, as applicable, is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 647 (S.B. 1026), Sec. 1, eff. September 1, 2011.

Sec. 107.014. Powers and Duties of Attorney Ad Litem for Certain Parents

(a) Except as provided by Subsections (b) and (e), an attorney ad litem appointed under Section 107.013 to represent the interests of a parent whose identity or location is unknown or who has been served by citation by publication is only required to:

(1) conduct an investigation regarding the petitioner's due diligence in locating the parent;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the parent; and

(3) conduct an independent investigation to identify or locate the parent, as applicable.

(b) If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

(1) provide to each party and the court the parent's name and address and any other available locating information unless the court finds that:

(A) disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury; or

(B) the parent has been a victim of family violence; and

(2) if appropriate, assist the parent in making a claim of indigence for the appointment of an attorney.

(c) If the court makes a finding described by Subsection (b)(1)(A) or (B), the court may:

(1) order that the information not be disclosed; or

(2) render any other order the court considers necessary.

(d) If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under Section 107.013(a)(1).

(e) If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by this subsection, the court shall discharge the attorney from the appointment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 5, eff. September 1, 2013.

Sec. 107.0141. Temporary Appointment of Attorney Ad Litem for Certain Parents

(a) The court may appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at the time the court issues a temporary restraining order or attachment of the parent's child under Chapter 262 and ending on the court's determination of whether the parent is indigent before commencement of the full adversary hearing.

(b) An attorney ad litem appointed for a parent under this section:

(1) has the powers and duties of an attorney ad litem appointed under Section 107.0131; and

(2) if applicable, shall:

(A) conduct an investigation regarding the petitioner's due diligence in locating and serving citation on the parent; and

(B) interview any party or other person who may have information relating to the identity or location of the parent.

(c) If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

(1) inform the parent of the parent's right to be represented by an attorney and of the parent's right to an attorney ad litem appointed by the court, if the parent is indigent and appears in opposition to the suit;

(2) if the parent claims indigence and requests an attorney ad litem beyond the period of the temporary appointment under this section, assist the parent in making a claim of indigence for the appointment of an attorney ad litem; and

(3) assist the parent in preparing for the full adversary hearing under Subchapter C, Chapter 262.

(d) If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under Section 107.013(a)(1).

(e) If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by this subsection, the court shall discharge the attorney ad litem from the appointment.

(f) If the attorney ad litem identifies or locates the parent, and the court determines that the parent is not indigent, the court shall discharge the attorney ad litem from the appointment.

Added by Acts 2015, 84th Leg., R.S., Ch. 128 (S.B. 1931), Sec. 2, eff. September 1, 2015.

Sec. 107.015. ATTORNEY FEES

(a) An attorney appointed under this chapter to serve as an attorney ad litem for a child, an attorney in the dual role, or an attorney ad litem for a parent is entitled to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent.

(b) If the court determines that one or more of the parties are able to defray the fees and expenses of an attorney ad litem or guardian ad litem for the child as determined by the reasonable and customary fees for similar services in the county of jurisdiction, the fees and expenses may be ordered paid by one or more of those parties, or the court may order one or more of those parties, prior to final hearing, to pay the sums into the registry of the court or into an account authorized by the court for the use and benefit of the payee on order of the court. The sums may be taxed as costs to be assessed against one or more of the parties.

(c) If indigency of the parents is shown, an attorney ad litem appointed to represent a child or parent in a suit filed by a governmental entity shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51. The court may not award attorney ad litem fees under this chapter against the state, a state agency, or a political subdivision of the state except as provided by this subsection.

(d) A person appointed as a guardian ad litem or attorney ad litem shall complete and submit to the court a voucher or claim for payment that lists the fees charged and hours worked by the guardian ad litem or attorney ad litem. Information submitted under this section is subject to disclosure under Chapter 552, Government Code.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Redesignated from Family Code Sec. 107.003 by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 6, eff.

Sept. 1, 1999; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.07, eff. September 1, 2005.

ANNOTATIONS

In re R.D.Y., 51 S.W.3d 314, 325 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). An award of ad litem attorney's fees against an indigent party is improper. Only nonindigent parties or the county must pay such fees.

Sec. 107.016. CONTINUED REPRESENTATION; DURATION OF APPOINTMENT

In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as conservator of the child is requested:

(1) an order appointing the Department of Family and Protective Services as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem for the child for any period during the time the child remains in the conservatorship of the department, as set by the court;

(2) an order appointing the Department of Family and Protective Services as the child's managing conservator may provide for the continuation of the appointment of the attorney ad litem for the child as long as the child remains in the conservatorship of the department; and

(3) an attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

(A) the date the suit affecting the parent-child relationship is dismissed;

(B) the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or

(C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 6, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Acts 2011, 82nd Leg., R.S., Ch. 75 (H.B. 906), Sec. 2, eff. September 1, 2011. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 9, eff. Sept. 1, 2017.

ANNOTATIONS

In re P.M., No. 15-0171, 2016 WL 1274748 (Tex. Apr. 1, 2016). Indigent mother's right to counsel included the right to counsel to bring a petition for review in the Supreme Court, in termination of parental rights proceeding.

In re E.A.F., 424 S.W.3d 742 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Trial court was not authorized to relieve an attorney ad litem appointed for indigent father in termination of parental rights proceedings of his duties, where there was no finding of good cause.

Sec. 107.0161. AD LITEM APPOINTMENTS FOR CHILD COMMITTED TO TEXAS JUVENILE JUSTICE DEPARTMENT

If an order appointing the Department of Family and Protective Services as managing conservator of a child does not continue the appointment of the child's guardian ad litem or attorney ad litem and the child is committed to the Texas Juvenile Justice Department or released under supervision by the Texas Juvenile Justice Department, the court may appoint a guardian ad litem or attorney ad litem for the child.

Added by Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 3, eff. May 23, 2009. Amended by: Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 79, eff. September 1, 2015.

Sec. 107.017. APPOINTMENT OF AMICUS ATTORNEY PROHIBITED

The court may not appoint a person to serve as an amicus attorney in a suit filed by a governmental entity under this chapter.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

PART 2. APPOINTMENTS IN SUITS OTHER THAN SUITS BY GOVERNMENTAL ENTITY

Sec. 107.021. DISCRETIONARY APPOINTMENTS

(a) In a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint one of the following:

(1) an amicus attorney;

(2) an attorney ad litem; or

(3) a guardian ad litem.

(a–1) In a suit requesting termination of the parent-child relationship that is not filed by a governmental entity, the court shall, unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests, appoint one of the following:

(1) an amicus attorney; or

(2) an attorney ad litem.

(b) In determining whether to make an appointment under this section, the court:

(1) shall:

(A) give due consideration to the ability of the parties to pay reasonable fees to the appointee; and

(B) balance the child's interests against the cost to the parties that would result from an appointment by taking into consideration the cost of available alternatives for resolving issues without making an appointment;

(2) may make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child, unless the appointment is otherwise required by this code; and

(3) may not require a person appointed under this section to serve without reasonable compensation for the services rendered by the person.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 8, eff. September 1, 2005.

ANNOTATIONS

In re R.H.W. III, 542 S.W.3d 724 (Tex. App.—Houston [14th Dist.] 2018, no pet.). The Family Code authorizes a trial court to make a discretionary appointment of an amicus attorney in a private SAPCR when the best interest of the child is an issue.

In re K.M.M., 326 S.W.3d 714, 715 (Tex. App.—Amarillo 2010, no pet.). "[W]here parents are adversaries in a suit to terminate one parent's rights, the trial court can seldom find that one party adequately represents the interests of the children involved or that their interests are not adverse." If the trial court does not make a specific finding whether a parent can adequately represent a child's interest, no finding may be implied, and failure to abide by this section may be raised on appeal.

Sec. 107.022. CERTAIN PROHIBITED APPOINTMENTS

In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may not appoint:

(1) an attorney to serve in the dual role; or

(2) a volunteer advocate to serve as guardian ad litem for a child unless the training of the volunteer advocate is designed for participation in suits other than suits filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 9, eff. September 1, 2005.

Sec. 107.023. FEES IN SUITS OTHER THAN SUITS BY GOVERNMENTAL ENTITY

(a) In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, in addition to the attorney's fees that may be awarded under Chapter 106, the following persons are entitled to reasonable fees and expenses in an amount set by the court and ordered to be paid by one or more parties to the suit:

(1) an attorney appointed as an amicus attorney or as an attorney ad litem for the child; and

(2) a professional who holds a relevant professional license and who is appointed as guardian ad litem for the child, other than a volunteer advocate.

(b) The court shall:

(1) determine the fees and expenses of an amicus attorney, an attorney ad litem, or a guardian ad litem by reference to the reasonable and customary fees for similar services in the county of jurisdiction;

(2) order a reasonable cost deposit to be made at the time the court makes the appointment; and

(3) before the final hearing, order an additional amount to be paid to the credit of a trust account for the use and benefit of the amicus attorney, attorney ad litem, or guardian ad litem.

(c) A court may not award costs, fees, or expenses to an amicus attorney, attorney ad litem, or guardian ad litem against the state, a state agency, or a political subdivision of the state under this part.

(d) The court may determine that fees awarded under this subchapter to an amicus attorney, an attorney ad litem for the child, or a guardian ad litem for the child are necessaries for the benefit of the child.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 10, eff. September 1, 2005.

ANNOTATIONS

In re R.H.W. III, 542 S.W.3d 724 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Trial court erred in awarding the amicus attorney fees as additional child support and providing for enforcement of its order by a wage withholding order. The Family Code does not equate necessaries with child support.

SUBCHAPTER C. APPOINTMENT OF VOLUNTEER ADVOCATES

Sec. 107.031. VOLUNTEER ADVOCATES

(a) In a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint a charitable organization composed of volunteer advocates whose charter mandates the provision of services to allegedly abused and neglected children or an individual who has received the court's approved training regarding abused and neglected children and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child.

(b) In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint a charitable organization composed of volunteer advocates whose training provides for the provision of services in private custody disputes or a person who has received the court's approved training regarding the subject matter of the suit and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child. A person appointed under this subsection is not entitled to fees under Section 107.023.

(c) A court-certified volunteer advocate appointed under this section may be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b), if:

(1) the child is in the conservatorship of the Department of Family and Protective Services;

(2) the volunteer advocate is serving as guardian ad litem for the child;

(3) a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code; and

(4) the volunteer advocate completes a training program for surrogate parents that complies with minimum standards established by rule by the Texas Education Agency within the time specified by Section 29.015(b), Education Code.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1294, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 430, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003. Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 11, eff. September 1, 2005. Acts 2017, 85th Leg., R.S., Ch. 1025 (H.B. 1556), Sec. 3, eff. Sept. 1, 2017.

SUBCHAPTER D. CHILD CUSTODY EVALUATION

Sec. 107.101. DEFINITIONS

In this subchapter:

(1) "Child custody evaluation" means an evaluative process ordered by a court in a contested case through which information, opinions, recommendations, and answers to specific questions asked by the court may be:

(A) made regarding:

(i) conservatorship of a child, including the terms and conditions of conservatorship;

(ii) possession of or access to a child, including the terms and conditions of possession or access; or

(iii) any other issue affecting the best interest of a child; and

(B) made to the court, the parties to the suit, the parties' attorneys, and any other person appointed under this chapter by the court in the suit.

(2) "Child custody evaluator" means an individual who conducts a child custody evaluation under this subchapter. The term includes a private child custody evaluator.

(3) "Department" means the Department of Family and Protective Services.

(4) "Person" includes an agency or a domestic relations office.

(5) "Private child custody evaluator" means a person conducting a child custody evaluation who is not conducting the evaluation as an employee of or contractor with a domestic relations office.

(6) "Supervision" means directing, regularly reviewing, and meeting with a person with respect to the completion of work for which the supervisor is responsible for the outcome. The term does not require the constant physical presence of the person providing supervision and may include telephonic or other electronic communication.

Added by Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 1, eff. September 1, 2007. Redesignated and amended from Family Code, Section 107.0501 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.03, eff. September 1, 2015.

Sec. 107.102. APPLICABILITY

(a) For purposes of this subchapter, a child custody evaluation does not include services provided in accordance with the Interstate Compact on the Placement of Children adopted under Subchapter B, Chapter 162, or an evaluation conducted in accordance with Section 262.114 by an employee of or contractor with the department.

(b) The department may not conduct a child custody evaluation.

(c) Except as provided by Subsections (a) and (b), this subchapter does not apply to the department or to a suit to which the department is a party.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.04, eff. September 1, 2015.

Sec. 107.1025. EFFECT OF MENTAL EXAMINATION

A mental examination described by Rule 204.4, Texas Rules of Civil Procedure, does not by itself satisfy the requirements for a child custody evaluation under this subchapter. A mental examination may be included in the report required under this subchapter and relied on by the child custody evaluator to the extent the evaluator considers appropriate under the circumstances.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.04, eff. September 1, 2015.

Sec. 107.103. ORDER FOR CHILD CUSTODY EVALUATION

(a) The court, after notice and hearing or on agreement of the parties, may order the preparation of a child custody evaluation regarding:

(1) the circumstances and condition of:

(A) a child who is the subject of a suit;

(B) a party to a suit; and

(C) if appropriate, the residence of any person requesting conservatorship of, possession of, or access to a child who is the subject of the suit; and

(2) any issue or question relating to the suit at the request of the court before or during the evaluation process.

(b) The court may not appoint a child custody evaluator in a suit involving a nonparent seeking conservatorship of a child unless, after notice and hearing or on agreement of the parties, the court makes a specific finding that good cause has been shown for the appointment of a child custody evaluator.

(c) Except for an order appointing a child custody evaluator who is qualified under Section 107.104(b)(3), an order for a child custody evaluation must include:

(1) the name of each person who will conduct the evaluation;

(2) the purpose of the evaluation;

(3) a list of the basic elements of an evaluation required by Section 107.109(c);

(4) a list of any additional elements of an evaluation required by the court to be completed, including any additional elements specified in Section 107.109(d); and

(5) the specific issues or questions to be addressed in the evaluation.

(d) Except as provided by Section 107.106, each individual who conducts a child custody evaluation must be qualified under Section 107.104.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 133, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 488, Sec. 1, eff. June 11, 2001. Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 2, eff. September 1, 2007. Redesignated and amended from Family Code, Section 107.051 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.05, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 257 (H.B. 1501), Sec. 2, eff. Sept. 1, 2017.

Sec. 107.104. CHILD CUSTODY EVALUATOR: MINIMUM QUALIFICATIONS

(a) In this section:

(1) "Full-time experience" means a period during which an individual works at least 30 hours per week.

(2) "Human services field of study" means a field of study designed to prepare an individual in the disciplined application of counseling, family therapy, psychology, or social work values, principles, and methods.

(b) To be qualified to conduct a child custody evaluation, an individual must:

(1) have at least a master's degree from an accredited college or university in a human services field of study and a license to practice in this state as a social worker, professional counselor, marriage and family therapist, or psychologist, or have a license to practice medicine in this state and a board certification in psychiatry and:

(A) after completing any degree required by this subdivision, have two years of full-time experience or equivalent part-time experience under professional supervision during which the individual performed functions involving the evaluation of physical, intellectual, social, and psychological functioning and needs and developed an understanding of the social and physical environment, both present and prospective, to meet those needs; and

(B) after obtaining a license required by this subdivision, have performed at least 10 court-ordered child custody evaluations under the supervision of an individual qualified under this section;

(2) meet the requirements of Subdivision (1)(A) and be practicing under the direct supervision of an individual qualified under this section in order to complete at least 10 court-ordered child custody evaluations under supervision; or

(3) be employed by or under contract with a domestic relations office, provided that the individual conducts child custody evaluations relating only to families ordered by a court to participate in child custody evaluations conducted by the domestic relations office.

(c) Notwithstanding Subsections (b)(1) and (2), an individual with a doctoral degree and who holds a license in a human services field of study is qualified to conduct a child custody evaluation if the individual has completed a number of hours of professional development coursework and practice experience directly related to the performance of child custody evaluations as described by this chapter, satisfactory to the licensing agency that issues the individual's license.

(d) The licensing agency that issues a license to an individual described by Subsection (c) may determine by rule that internships, practicums, and other professional preparatory activities completed by the individual during the course of achieving the person's doctoral degree satisfy the requirements of Subsection (c) in whole or in part.

(e) In addition to the qualifications prescribed by this section, an individual must complete at least eight hours of family violence dynamics training provided by a family violence service provider to be qualified to conduct a child custody evaluation under this subchapter.

Added by Acts 2001, 77th Leg., ch. 133, Sec. 3, eff. Sept. 1, 2001. Added by Acts 2001, 77th Leg., ch. 133, Sec. 3, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 3, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 2, eff. September 1, 2009. Redesignated and amended from Family Code, Section 107.0511 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.06, eff. September 1, 2015.

Sec. 107.105. CHILD CUSTODY EVALUATION: SPECIALIZED TRAINING REQUIRED

(a) The court shall determine whether the qualifications of a child custody evaluator satisfy the requirements of this subchapter.

(b) A child custody evaluator must demonstrate, if requested, appropriate knowledge and competence in child custody evaluation services consistent with professional models, standards, and guidelines.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.07, eff. September 1, 2015.

Sec. 107.106. EXCEPTION TO QUALIFICATIONS REQUIRED TO CONDUCT CHILD CUSTODY EVALUATION

(a) **This section applies only to a county:**

(1) with a population of less than 500,000;

(2) that is contiguous to the Gulf of Mexico or a bay or inlet opening into the gulf and that borders the United Mexican States; or

(3) that borders a county described by Subdivision (2).

(a–1) In a county **to which this section applies** ~~with a population of less than 500,000~~, if a court finds that an individual who meets the requirements of Section 107.104 is not available in the county to conduct a child custody evaluation in a timely manner, the court, after notice and hearing or on agreement of the parties, may appoint an individual the court determines to be otherwise qualified to conduct the evaluation.

(b) An individual appointed under this section shall comply with all provisions of this subchapter, other than Section 107.104.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.07, eff. Sept. 1, 2015. Amended by Acts 2019, 86th Leg., H.B. 2514, Sec. 1, eff. Sept. 1, 2019.

Sec. 107.107. CHILD CUSTODY EVALUATOR: CONFLICTS OF INTEREST AND BIAS

(a) Before accepting appointment as a child custody evaluator in a suit, a person must disclose to the court, each attorney for a party to the suit, any attorney for a child who is the subject of the suit, and any party to the suit who does not have an attorney:

(1) any conflict of interest that the person believes the person has with any party to the suit or a child who is the subject of the suit;

(2) any previous knowledge that the person has of a party to the suit or a child who is the subject of the suit, other than knowledge obtained in a court-ordered evaluation;

(3) any pecuniary relationship that the person believes the person has with an attorney in the suit;

(4) any relationship of confidence or trust that the person believes the person has with an attorney in the suit; and

(5) any other information relating to the person's relationship with an attorney in the suit that a reasonable, prudent person would believe would affect the ability of the person to act impartially in conducting a child custody evaluation.

(b) The court may not appoint a person as a child custody evaluator in a suit if the person makes any of the disclosures in Subsection (a) unless:

(1) the court finds that:

(A) the person has no conflict of interest with a party to the suit or a child who is the subject of the suit;

(B) the person's previous knowledge of a party to the suit or a child who is the subject of the suit is not relevant;

(C) the person does not have a pecuniary relationship with an attorney in the suit; and

(D) the person does not have a relationship of trust or confidence with an attorney in the suit; or

(2) the parties and any attorney for a child who is the subject of the suit agree in writing to the person's appointment as the child custody evaluator.

(c) After being appointed as a child custody evaluator in a suit, a person shall immediately disclose to the court, each attorney for a party to the suit, any attorney for a child who is the subject of the suit, and any party to the suit who does not have an attorney any discovery of:

(1) a conflict of interest that the person believes the person has with a party to the suit or a child who is the subject of the suit; and

(2) previous knowledge that the person has of a party to the suit or a child who is the subject of the suit, other than knowledge obtained in a court-ordered evaluation.

(d) A person shall resign from the person's appointment as a child custody evaluator in a suit if the person makes any of the disclosures in Subsection (c) unless:

(1) the court finds that:

(A) the person has no conflict of interest with a party to the suit or a child who is the subject of the suit; and

(B) the person's previous knowledge of a party to the suit or a child who is the subject of the suit is not relevant; or

(2) the parties and any attorney for a child who is the subject of the suit agree in writing to the person's continued appointment as the child custody evaluator.

(e) A child custody evaluator who has previously conducted a child custody evaluation for a suit may conduct all subsequent evaluations in the suit unless the court finds that the evaluator is biased.

(f) An individual may not be appointed as a child custody evaluator in a suit if the individual has worked in a professional capacity with a party to the suit, a child who is the subject of the suit, or a member of the party's or child's family who is involved in the suit. This subsection does not apply to an individual who has worked in a professional capacity with a party, a child, or a member of the party's or child's family only as a teacher of parenting skills in a group setting, with no individualized interaction with any party, the child, any party's family, or the child's family, or as a child custody evaluator who performed a previous evaluation. A child custody evaluator who has worked as a teacher of parenting skills in a group setting that included a party, a child, or another person who will be the subject of an evaluation or has worked as a child custody evaluator for a previous evaluation must notify the court and the attorney of each represented party or, if a party is not represented, the evaluator must notify the party. For purposes of this subsection, "family" has the meaning assigned by Section 71.003.

Added by Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 3, eff. September 1, 2007. Redesignated and amended from Family Code, Section 107.0512 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.08, eff. September 1, 2015.

Sec. 107.108. General Provisions Applicable to Conduct of Child Custody Evaluation and Preparation of Report

(a) Unless otherwise directed by a court or prescribed by a provision of this title, a child custody evaluator's actions in conducting a child custody evaluation must be in conformance with the professional standard of care applicable to the evaluator's licensure and any administrative rules, ethical standards, or guidelines adopted by the licensing authority that licenses the evaluator.

(b) A court may impose requirements or adopt local rules applicable to a child custody evaluation or a child custody evaluator that do not conflict with this subchapter.

(c) A child custody evaluator shall follow evidence-based practice methods and make use of current best evidence in making assessments and recommendations.

(d) A child custody evaluator shall disclose to each attorney of record any communication regarding a substantive issue between the evaluator and an attorney of record representing a party in a contested suit. This subsection does not apply to a communication between a child custody evaluator and an attorney ad litem or amicus attorney.

(e) To the extent possible, a child custody evaluator shall verify each statement of fact pertinent to a child custody evaluation and shall note the sources of verification and information in the child custody evaluation report prepared under Section 107.113.

(f) A child custody evaluator shall state the basis for the evaluator's conclusions or recommendations, and the extent to which information obtained limits the reliability and validity of the opinion and the conclusions and recommendations of the evaluator, in the child custody evaluation report prepared under Section 107.113. A child custody evaluator who has evaluated only one side of a contested suit shall refrain from making a recommendation regarding conservatorship of a child or possession of or access to a child, but may state whether any information obtained regarding a child's placement with a party indicates concerns for:

(1) the safety of the child;

(2) the party's parenting skills or capability;

(3) the party's relationship with the child; or

(4) the mental health of the party.

(g) A child custody evaluation must be conducted in compliance with this subchapter, regardless of whether the child custody evaluation is conducted:

(1) by a single child custody evaluator or multiple evaluators working separately or together; or

(2) within a county served by the court with continuing jurisdiction or at a geographically distant location.

(h) A child custody evaluation report must include for each child custody evaluator who conducted any portion of the child custody evaluation:

(1) the name and license number of the child custody evaluator; and

(2) a statement that the child custody evaluator:

(A) has read and meets the requirements of Section 107.104; or

(B) was appointed under Section 107.106.

Added by Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 3, eff. September 1, 2007. Redesignated and amended from Family Code, Section 107.0513 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.09, eff. September 1, 2015.

Sec. 107.109. ELEMENTS OF CHILD CUSTODY EVALUATION

(a) A child custody evaluator may not offer an opinion regarding conservatorship of a child who is the subject of a suit or possession of or access to the child unless each basic element of a child custody

evaluation as specified in this section and each additional element ordered by the court, if any, has been completed, unless the failure to complete an element is satisfactorily explained as provided by Subsection (b).

(b) A child custody evaluator shall:

(1) identify in the report required by Section 107.113 any basic element or any additional element of a child custody evaluation described by this section that was not completed;

(2) explain the reasons the element was not completed; and

(3) include an explanation of the likely effect of the missing element on the confidence the child custody evaluator has in the evaluator's expert opinion.

(c) The basic elements of a child custody evaluation under this subchapter consist of:

(1) a personal interview of each party to the suit seeking conservatorship of, possession of, or access to the child;

(2) interviews, conducted in a developmentally appropriate manner, of each child who is the subject of the suit who is at least four years of age during a period of possession of each party to the suit but outside the presence of the party;

(3) observation of each child who is the subject of the suit, regardless of the age of the child, in the presence of each party to the suit, including, as appropriate, during supervised visitation, unless contact between a party and a child is prohibited by court order or the person conducting the evaluation has good cause for not conducting the observation and states the good cause in writing provided to the parties to the suit before the completion of the evaluation;

(4) an observation and, if the child is at least four years of age, an interview of any child who is not a subject of the suit who lives on a full-time basis in a residence that is the subject of the evaluation, including with other children or parties who are subjects of the evaluation, where appropriate;

(5) the obtaining of information from relevant collateral sources, including the review of:

(A) relevant school records;

(B) relevant physical and mental health records of each party to the suit and each child who is the subject of the suit;

(C) relevant records of the department obtained under Section 107.111;

(D) criminal history information relating to each child who is the subject of the suit, each party to the suit, and each person who lives with a party to the suit; and

(E) notwithstanding other law, records or information from any other collateral source that may have relevant information;

(6) for each individual residing in a residence subject to the child custody evaluation, consideration of any criminal history information and any contact with the department or a law enforcement agency regarding abuse or neglect; and

(7) assessment of the relationship between each child who is the subject of the suit and each party seeking possession of or access to the child.

(d) The court may order additional elements of a child custody evaluation under this subchapter, including the following:

(1) balanced interviews and observations of each child who is the subject of the suit so that a child who is interviewed or observed while in the care of one party to the suit is also interviewed or observed while in the care of each other party to the suit;

(2) an interview of each individual, including a child who is at least four years of age, residing on a full-time or part-time basis in a residence subject to the child custody evaluation;

(3) evaluation of the residence of each party seeking conservatorship of a child who is the subject of the suit or possession of or access to the child;

(4) observation of a child who is the subject of the suit with each adult who lives in a residence that is the subject of the evaluation;

(5) an interview, if the child is at least four years of age, and observation of a child who is not the subject of the suit but who lives on a full-time or part-time basis in a residence that is the subject of the evaluation;

(6) psychometric testing, if necessary, consistent with Section 107.110; and

(7) the performance of other tasks requested of the evaluator by the court, including:

(A) a joint interview of the parties to the suit; or

(B) the review of any other information that the court determines is relevant.

Added by Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 3, eff. September 1, 2007. Redesignated and amended from Family Code, Section 107.0514 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.10, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 257 (H.B. 1501), Sec. 3, eff. Sept. 1, 2017.

Sec. 107.110. PSYCHOMETRIC TESTING

(a) A child custody evaluator may conduct psychometric testing as part of a child custody evaluation if:

(1) ordered by the court or determined necessary by the child custody evaluator; and

(2) the child custody evaluator is:

(A) appropriately licensed and trained to administer and interpret the specific psychometric tests selected; and

(B) trained in the specialized forensic application of psychometric testing.

(b) Selection of a specific psychometric test is at the professional discretion of the child custody evaluator based on the specific issues raised in the suit.

(c) A child custody evaluator may only use psychometric tests if the evaluator is familiar with the reliability, validation, and related standardization or outcome studies of, and proper applications and use of, the tests within a forensic setting.

(d) If a child custody evaluator considers psychometric testing necessary but lacks specialized training or expertise to use the specific tests under this section, the evaluator may designate a licensed psychologist to conduct the testing and may request additional orders from the court.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.11, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 257 (H.B. 1501), Sec. 4, eff. Sept. 1, 2017.

Sec. 107.1101. EFFECT OF POTENTIALLY UNDIAGNOSED SERIOUS MENTAL ILLNESS

(a) In this section, "serious mental illness" has the meaning assigned by Section 1355.001, Insurance Code.

(b) If a child custody evaluator identifies the presence of a potentially undiagnosed serious mental illness experienced by an individual who is a subject of the child custody evaluation and the evaluator is not qualified by the evaluator's licensure, experience, and training to assess a serious mental illness, the evaluator shall make one or more appropriate referrals for a mental examination of the individual and may request additional orders from the court.

(c) The child custody evaluation report must include any information that the evaluator considers appropriate under the circumstances regarding the possible effects of an individual's potentially undiagnosed serious mental illness on the evaluation and the evaluator's recommendations.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.12, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 257 (H.B. 1501), Sec. 5, eff. Sept. 1, 2017.

Sec. 107.111. CHILD CUSTODY EVALUATOR ACCESS TO INVESTIGATIVE RECORDS OF DEPARTMENT; OFFENSE

(a) A child custody evaluator appointed by a court is entitled to obtain from the department a complete, unredacted copy of any investigative record regarding abuse or neglect that relates to any person residing in the residence subject to the child custody evaluation.

(b) Except as provided by this section, records obtained by a child custody evaluator from the department under this section are confidential and not subject to disclosure under Chapter 552, Government Code, or to disclosure in response to a subpoena or a discovery request.

(c) A child custody evaluator may disclose information obtained under Subsection (a) in the child custody evaluation report prepared under Section 107.113 only to the extent the evaluator determines that the information is relevant to the child custody evaluation or a recommendation made under this subchapter.

(d) A person commits an offense if the person recklessly discloses confidential information obtained from the department in violation of this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 74 (S.B. 330), Sec. 1, eff. September 1, 2013. Redesignated and amended from Family Code, Section 107.05145 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.13, eff. September 1, 2015.

Sec. 107.1111. CHILD CUSTODY EVALUATOR ACCESS TO OTHER RECORDS

(a) Notwithstanding any other state law regarding confidentiality, a child custody evaluator appointed by a court is entitled to obtain records that relate to any person residing in a residence subject to a child custody evaluation from:

(1) a local law enforcement authority;

(2) a criminal justice agency;

(3) a juvenile justice agency;

(4) a community supervision and corrections department created under Chapter 76, Government Code; or

(5) any other governmental entity.

(b) Except as provided by this section, records obtained by a child custody evaluator under this section are confidential and not subject to disclosure under Chapter 552, Government Code, or to disclosure in response to a subpoena or a discovery request.

(c) A child custody evaluator may disclose information obtained under Subsection (a) in the child custody evaluation report prepared under Section 107.113 only to the extent the evaluator determines that the information is relevant to the child custody evaluation or a recommendation made under this subchapter.

(d) A person commits an offense if the person recklessly discloses confidential information obtained under Subsection (a) in violation of this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 2017, 85th Leg., R.S., Ch. 257 (H.B. 1501), Sec. 6, eff. Sept. 1, 2017.

Sec. 107.112. COMMUNICATIONS AND RECORDKEEPING OF CHILD CUSTODY EVALUATOR

(a) Notwithstanding any rule, standard of care, or privilege applicable to the professional license held by a child custody evaluator, a communication made by a participant in a child custody evaluation is subject to disclosure and may be offered in any judicial or administrative proceeding if otherwise admissible under the rules of evidence.

(b) A child custody evaluator shall:

(1) keep a detailed record of interviews that the evaluator conducts, observations that the evaluator makes, and substantive interactions that the evaluator has as part of a child custody evaluation; and

(2) maintain the evaluator's records consistent with applicable laws, including rules applicable to the evaluator's license.

(c) Except for records obtained from the department in accordance with Section 107.111, a private child custody evaluator shall, after completion of an evaluation and the preparation and filing of a child custody evaluation report under Section 107.113, make available in a reasonable time the evaluator's records relating to the evaluation on the written request of an attorney for a party, a party who does not have an attorney, and any person appointed under this chapter in the suit in which the evaluator conducted the evaluation, unless a court has issued an order restricting disclosure of the records.

(d) Except for records obtained from the department in accordance with Section 107.111, records relating to a child custody evaluation conducted by an employee of or contractor with a domestic relations office shall, after completion of the evaluation and the preparation and filing of a child custody evaluation report under Section 107.113, be made available on written request according to the local rules and policies of the office.

(e) A person maintaining records subject to disclosure under this section may charge a reasonable fee for producing the records before copying the records.

(f) A private child custody evaluator shall retain all records relating to a child custody evaluation conducted by the evaluator until the ending date of the retention period adopted by the licensing author-

ity that issues the professional license held by the evaluator based on the date the evaluator filed the child custody evaluation report prepared under this section with the court.

(g) A domestic relations office shall retain records relating to a child custody evaluation conducted by a child custody evaluator acting as an employee of or contractor with the office for the retention period established by the office.

(h) A person who participates in a child custody evaluation is not a patient as that term is defined by Section 611.001(1), Health and Safety Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.14, eff. September 1, 2015.

Sec. 107.113. CHILD CUSTODY EVALUATION REPORT REQUIRED

(a) A child custody evaluator who conducts a child custody evaluation shall prepare a report containing the evaluator's findings, opinions, recommendations, and answers to specific questions asked by the court relating to the evaluation.

(b) The person conducting a child custody evaluation shall file with the court on a date set by the court notice that the report under this section is complete. On the earlier of the date the notice is filed or the date required under Section 107.114, the person shall provide a copy of the report to:

(1) each party's attorney;

(2) each party who is not represented by an attorney; and

(3) each attorney ad litem, guardian ad litem, and amicus attorney appointed in the suit.

(c) If the suit is settled before completion of the child custody evaluation report, the report under this section is not required.

(d) A report prepared under this section must include the information required by Section 107.108(h) for each child custody evaluator who conducted any portion of the evaluation.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Redesignated and amended from Family Code, Section 107.054 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.15, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 257 (H.B. 1501), Sec. 7, eff. Sept. 1, 2017.

Sec. 107.114. INTRODUCTION AND PROVISION OF CHILD CUSTODY EVALUATION REPORT

(a) Disclosure to the court or the jury of the contents of a child custody evaluation report prepared under Section 107.113 is subject to the rules of evidence.

(b) Unless the court has rendered an order restricting disclosure, a private child custody evaluator shall provide to the attorneys of the parties to a suit, any party who does not have an attorney, and any other person appointed by the court under this chapter in a suit a copy of the child custody evaluation report before the earlier of:

(1) the third day after the date the child custody evaluation report is completed; or

(2) the 30th day before the date of commencement of the trial.

(c) A child custody evaluator who conducts a child custody evaluation as an employee of or under contract with a domestic relations office shall provide to the attorneys of the parties to a suit and any person appointed in the suit under this chapter a copy of the child custody evaluation report before the earlier of:

(1) the seventh day after the date the child custody evaluation report is completed; or

(2) the fifth day before the date the trial commences.

(d) A child custody evaluator who conducts a child custody evaluation as an employee of or under contract with a domestic relations office shall provide a copy of the report to a party to the suit as provided by the local rules and policies of the office or by a court order.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Redesignated and amended from Family Code, Section 107.055 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.16, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 257 (H.B. 1501), Sec. 8, eff. Sept. 1, 2017.

Sec. 107.115. CHILD CUSTODY EVALUATION FEE

If the court orders a child custody evaluation to be conducted, the court shall award the person appointed as the child custody evaluator a reasonable fee for the preparation of the child custody evaluation that shall be imposed in the form of a money judgment and paid directly to the person. The person may enforce the judgment for the fee by any means available under law for civil judgments.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 5, eff. September 1, 2007. Redesignated and amended from Family Code, Section 107.056 by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.17, eff. September 1, 2015.

SUBCHAPTER E. ADOPTION EVALUATION

Sec. 107.151. DEFINITIONS

In this subchapter:

(1) "Adoption evaluation" means a pre-placement or post-placement evaluative process through which information and recommendations regarding adoption of a child may be made to the court, the parties, and the parties' attorneys.

(2) "Adoption evaluator" means a person who conducts an adoption evaluation under this subchapter.

(3) "Department" means the Department of Family and Protective Services.

(4) "Supervision" means directing, regularly reviewing, and meeting with a person with respect to the completion of work for which the supervisor is responsible for the outcome. The term does not require the constant physical presence of the person providing supervision and may include telephonic or other electronic communication.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.152. APPLICABILITY

(a) For purposes of this subchapter, an adoption evaluation does not include services provided in accordance with the Interstate Compact on the Placement of Children adopted under Subchapter B, Chapter 162, or an evaluation conducted in accordance with Section 262.114 by an employee of or contractor with the department.

(b) This subchapter does not apply to the pre-placement and post-placement parts of an adoption evaluation conducted by a licensed child-placing agency or the department.

(c) The pre-placement and post-placement parts of an adoption evaluation conducted by a licensed child-placing agency or the department are governed by rules adopted by the commissioner of the department.

(d) In a suit involving a licensed child-placing agency or the department, a licensed child-placing agency or the department shall conduct the pre-placement and post-placement parts of the adoption evaluation and file reports on those parts with the court before the court renders a final order of adoption.

(e) A court may appoint the department to conduct the pre-placement and post-placement parts of an adoption evaluation in a suit only if the department is:

(1) a party to the suit; or

(2) the managing conservator of the child who is the subject of the suit.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 3, eff. Sept. 1, 2017.

Sec. 107.153. ORDER FOR ADOPTION EVALUATION

(a) The court shall order the performance of an adoption evaluation to evaluate each party who requests termination of the parent-child relationship or an adoption in a suit for:

(1) termination of the parent-child relationship in which a person other than a parent may be appointed managing conservator of a child; or

(2) an adoption.

(b) The adoption evaluation required under Subsection (a) must include an evaluation of the circumstances and the condition of the home and social environment of any person requesting to adopt a child who is at issue in the suit.

(c) The court may appoint a qualified individual, a qualified private entity, or a domestic relations office to conduct the adoption evaluation.

(d) Except as provided by Section 107.155, a person who conducts an adoption evaluation must meet the requirements of Section 107.154.

(e) The costs of an adoption evaluation under this section shall be paid by the prospective adoptive parent.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.154. ADOPTION EVALUATOR: MINIMUM QUALIFICATIONS

(a) In this section:

(1) "Full-time experience" means a period during which a person works at least 30 hours per week.

(2) "Human services field of study" means a field of study designed to prepare a person in the disciplined application of counseling, family therapy, psychology, or social work values, principles, and methods.

(b) To be qualified to conduct an adoption evaluation under this subchapter, a person must:

(1) have a degree from an accredited college or university in a human services field of study and a license to practice in this state as a social worker, professional counselor, marriage and family therapist, or psychologist and:

(A) have one year of full-time experience working at a child-placing agency conducting child-placing activities; or

(B) be practicing under the direct supervision of a person qualified under this section to conduct adoption evaluations;

(2) be employed by or under contract with a domestic relations office, provided that the person conducts adoption evaluations relating only to families ordered to participate in adoption evaluations conducted by the domestic relations office; or

(3) be qualified as a child custody evaluator under Section 107.104.

(c) In addition to the other qualifications prescribed by this section, an individual must complete at least eight hours of family violence dynamics training provided by a family violence service provider to be qualified to conduct an adoption evaluation under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 4(a), eff. Sept. 1, 2017.

Sec. 107.155. EXCEPTION TO QUALIFICATIONS REQUIRED TO CONDUCT ADOPTION EVALUATION

(a) In a county with a population of less than 500,000, if a court finds that an individual who meets the requirements of Section 107.154 is not available in the county to conduct an adoption evaluation in a timely manner, the court, after notice and hearing or on agreement of the parties, may appoint a person the court determines to be otherwise qualified to conduct the evaluation.

(b) An individual appointed under this section shall comply with all provisions of this subchapter, other than Section 107.154.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.156. ADOPTION EVALUATOR: CONFLICTS OF INTEREST AND BIAS

(a) Before accepting appointment as an adoption evaluator in a suit, a person must disclose to the court, each attorney for a party to the suit, any attorney for a child who is the subject of the suit, and any party to the suit who does not have an attorney:

(1) any conflict of interest that the person believes the person has with a party to the suit or a child who is the subject of the suit;

(2) any previous knowledge that the person has of a party to the suit or a child who is the subject of the suit;

(3) any pecuniary relationship that the person believes the person has with an attorney in the suit;

(4) any relationship of confidence or trust that the person believes the person has with an attorney in the suit; and

(5) any other information relating to the person's relationship with an attorney in the suit that a reasonable, prudent person would believe would affect the ability of the person to act impartially in conducting an adoption evaluation.

(b) The court may not appoint a person as an adoption evaluator in a suit if the person makes any of the disclosures in Subsection (a) unless:

(1) the court finds that:

(A) the person has no conflict of interest with a party to the suit or a child who is the subject of the suit;

(B) the person's previous knowledge of a party to the suit or a child who is the subject of the suit is not relevant;

(C) the person does not have a pecuniary relationship with an attorney in the suit; and

(D) the person does not have a relationship of trust or confidence with an attorney in the suit; or

(2) the parties and any attorney for a child who is the subject of the suit agree in writing to the person's appointment as the adoption evaluator.

(c) After being appointed as an adoption evaluator in a suit, a person shall immediately disclose to the court, each attorney for a party to the suit, any attorney for a child who is the subject of the suit, and any party to the suit who does not have an attorney any discovery of:

(1) a conflict of interest that the person believes the person has with a party to the suit or a child who is the subject of the suit; and

(2) previous knowledge that the person has of a party to the suit or a child who is the subject of the suit, other than knowledge obtained in a court-ordered evaluation.

(d) A person shall resign from the person's appointment as an adoption evaluator in a suit if the person makes any of the disclosures in Subsection (c) unless:

(1) the court finds that:

(A) the person has no conflict of interest with a party to the suit or a child who is the subject of the suit; and

(B) the person's previous knowledge of a party to the suit or a child who is the subject of the suit is not relevant; or

(2) the parties and any attorney for a child who is the subject of the suit agree in writing to the person's continued appointment as the adoption evaluator.

(e) An individual may not be appointed as an adoption evaluator in a suit if the individual has worked in a professional capacity with a party to the suit, a child who is the subject of the suit, or a member of the party's or child's family who is involved in the suit. This subsection does not apply to an individual who has worked in a professional capacity with a party, a child, or a member of the party's or child's family only as a teacher of parenting skills in a group setting, with no individualized interaction with any party, the child, any party's family, or the child's family, or as a child custody evaluator or adoption evaluator who performed a previous evaluation. For purposes of this subsection, "family" has the meaning assigned by Section 71.003.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.157. REPORTING CERTAIN PLACEMENTS FOR ADOPTION

An adoption evaluator shall report to the department any adoptive placement that appears to have been made by someone other than a licensed child-placing agency or a child's parent or managing conservator.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.158. GENERAL PROVISIONS APPLICABLE TO CONDUCT OF ADOPTION EVALUATOR AND PREPARATION OF REPORTS

(a) Unless otherwise directed by a court or prescribed by this subchapter, an adoption evaluator's actions in conducting an adoption evaluation must be in conformance with the professional standard of care applicable to the evaluator's licensure and any administrative rules, ethical standards, or guidelines adopted by the licensing authority that licenses the evaluator.

(b) A court may impose requirements or adopt local rules applicable to an adoption evaluation or an adoption evaluator that do not conflict with this subchapter.

(c) An adoption evaluator shall follow evidence-based practice methods and make use of current best evidence in making assessments and recommendations.

(d) An adoption evaluator shall disclose to each attorney of record any communication regarding a substantive issue between the evaluator and an attorney of record representing a party in a contested suit. This subsection does not apply to a communication between an adoption evaluator and an amicus attorney.

(e) To the extent possible, an adoption evaluator shall verify each statement of fact pertinent to an adoption evaluation and shall note the sources of verification and information in any report prepared on the evaluation.

(f) An adoption evaluator shall state the basis for the evaluator's conclusions or recommendations in any report prepared on the evaluation.

(g) An adoption evaluation report must include for each adoption evaluator who conducted any portion of the adoption evaluation:

(1) the name and license number of the adoption evaluator; and

(2) a statement that the adoption evaluator:

(A) has read and meets the requirements of Section 107.154; or

(B) was appointed under Section 107.155.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.159. REQUIREMENTS FOR PRE-PLACEMENT PORTION OF ADOPTION EVALUATION AND REPORT

(a) Unless otherwise agreed to by the court, the pre-placement part of an adoption evaluation must comply with the minimum requirements for the pre-placement part of an adoption evaluation under rules adopted by the commissioner of the department.

(b) Unless a child who is the subject of the suit begins to reside in a prospective adoptive home before the suit is commenced, an adoption evaluator shall file with the court a report containing the evaluator's findings and conclusions made after completion of the pre-placement portion of the adoption evaluation.

(c) In a suit filed after the date a child who is the subject of the suit begins to reside in a prospective adoptive home, the report required under this section and the post-placement adoption evaluation report required under Section 107.160 may be combined in a single report.

(d) The report required under this section must be filed with the court before the court may sign the final order for termination of the parent-child relationship. The report shall be included in the record of the suit.

(e) A copy of the report prepared under this section must be made available to the prospective adoptive parents before the court renders a final order of adoption.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 5, eff. Sept. 1, 2017.

Sec. 107.160. REQUIREMENTS FOR POST-PLACEMENT PORTION OF ADOPTION EVALUATION AND REPORT

(a) Unless otherwise agreed to by the court, the post-placement part of an adoption evaluation must comply with the minimum requirements for the post-placement part of an adoption evaluation under rules adopted by the commissioner of the department.

(b) An adoption evaluator shall file with the court a report containing the evaluator's findings and conclusions made after a child who is the subject of the suit in which the evaluation is ordered begins to reside in a prospective adoptive home.

(c) The report required under this section must be filed with the court before the court renders a final order of adoption. The report shall be included in the record of the suit.

(d) A copy of the report prepared under this section must be made available to the prospective adoptive parents before the court renders a final order of adoption.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 6, eff. Sept. 1, 2017.

Sec. 107.161. INTRODUCTION AND PROVISION OF ADOPTION EVALUATION REPORT AND TESTIMONY RELATING TO ADOPTION EVALUATION

(a) Disclosure to the jury of the contents of an adoption evaluation report prepared under Section 107.159 or 107.160 is subject to the rules of evidence.

(b) The court may compel the attendance of witnesses necessary for the proper disposition of a suit, including a representative of an agency that conducts an adoption evaluation, who may be compelled to testify.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.162. ADOPTION EVALUATION FEE

If the court orders an adoption evaluation to be conducted, the court shall award the adoption evaluator a reasonable fee for the preparation of the evaluation that shall be imposed in the form of a money judgment and paid directly to the evaluator. The evaluator may enforce the judgment for the fee by any means available under law for civil judgments.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.163. ADOPTION EVALUATOR ACCESS TO INVESTIGATIVE RECORDS OF DEPARTMENT; OFFENSE

(a) An adoption evaluator is entitled to obtain from the department a complete, unredacted copy of any investigative record regarding abuse or neglect that relates to any person residing in the residence subject to the adoption evaluation.

(b) Except as provided by this section, records obtained by an adoption evaluator from the department under this section are confidential and not subject to disclosure under Chapter 552, Government Code, or to disclosure in response to a subpoena or a discovery request.

(c) An adoption evaluator may disclose information obtained under Subsection (a) in the adoption evaluation report prepared under Section 107.159 or 107.160 only to the extent the evaluator determines that the information is relevant to the adoption evaluation or a recommendation made under this subchapter.

(d) A person commits an offense if the person recklessly discloses confidential information obtained from the department in violation of this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

SUBCHAPTER F. EVALUATIONS IN CONTESTED ADOPTIONS

Sec. 107.201. APPLICABILITY

This subchapter does not apply to services provided in accordance with the Interstate Compact on the Placement of Children adopted under Subchapter B, Chapter 162, to an evaluation conducted in accordance with Section 262.114 by an employee of or contractor with the department, or to a suit in which the Department of Family and Protective Services is a party.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

Sec. 107.202. ASSIGNMENT OF EVALUATIONS IN CONTESTED ADOPTIONS

(a) In a suit in which the adoption of a child is being contested, the court shall determine the nature of the questions posed before appointing an evaluator to conduct either a child custody evaluation or an adoption evaluation.

(b) If the court is attempting to determine whether termination of parental rights is in the best interest of a child who is the subject of the suit, the court shall order the evaluation as a child custody evalu-

ation under Subchapter D and include termination as one of the specific issues to be addressed in the evaluation.

(c) When appointing an evaluator to assess the issue of termination of parental rights, the court may, through written order, modify the requirements of the child custody evaluation to take into account the circumstances of the family to be assessed. The court may also appoint the evaluator to concurrently address the requirements for an adoption evaluation under Subchapter E if the evaluator recommends that termination of parental rights is in the best interest of the child who is the subject of the suit.

(d) If the court is attempting to determine whether the parties seeking adoption would be suitable to adopt the child who is the subject of the suit if the termination of parental rights is granted, but the court is not attempting to determine whether such termination of parental rights is in the child's best interest, the court may order the evaluation as an adoption evaluation under Subchapter E.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 1.18, eff. September 1, 2015.

SUBCHAPTER G. OFFICE OF CHILD REPRESENTATION AND OFFICE OF PARENT REPRESENTATION

Sec. 107.251. DEFINITION

In this subchapter, "governmental entity" includes a county, a group of counties, a department of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.061 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.252. APPLICABILITY

This subchapter applies to a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child in which appointment of an attorney is required under Section 107.012 or 107.013.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.062 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.253. NONPROFIT FUNDING

This subchapter does not limit or prevent a nonprofit corporation from receiving and using money obtained from other entities to provide legal representation and services as authorized by this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.063 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.254. OFFICE OF CHILD REPRESENTATION

An office of child representation is an entity that uses public money to provide legal representation and services for a child in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which appointment is mandatory for a child under Section 107.012.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.064 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.255. OFFICE OF PARENT REPRESENTATION

An office of parent representation is an entity that uses public money to provide legal representation and services for a parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child in which appointment is mandatory for a parent under Section 107.013.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.065 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.256. CREATION OF OFFICE OF CHILD REPRESENTATION OR OFFICE OF PARENT REPRESENTATION

(a) An office described by Section 107.254 or 107.255 may be a governmental entity or a nonprofit corporation operating under a written agreement with a governmental entity, other than an individual judge or court.

(b) The commissioners court of any county, on written approval of a judge of a statutory county court or a district court having family law jurisdiction in the county, may create an office of child representation, an office of parent representation, or both offices by establishing a department of the county or designating under a contract a nonprofit corporation to perform the duties of an office.

(c) The commissioners courts of two or more counties may enter into a written agreement to jointly create and jointly fund a regional office of child representation, a regional office of parent representation, or both regional offices.

(d) In creating an office of child representation or office of parent representation under this section, the commissioners court shall specify or the commissioners courts shall jointly specify, as applicable:

(1) the duties of the office;

(2) the types of cases to which the office may be appointed under this chapter and the courts in which an attorney employed by the office may be required to appear;

(3) if the office is a nonprofit corporation, the term during which the contract designating the office is effective and how that contract may be renewed on expiration of the term; and

(4) if an oversight board is established under Section 107.262 for the office, the powers and duties that have been delegated to the oversight board.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.066 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017. Amended by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(2), eff. September 1, 2017.

Sec. 107.257. NONPROFIT AS OFFICE

(a) Before contracting with a nonprofit corporation to serve as an office of child representation or office of parent representation, the commissioners court or commissioners courts, as applicable, must solicit proposals for the office.

(b) After considering each proposal for an office of child representation or office of parent representation submitted by a nonprofit corporation, the commissioners court or commissioners courts, as applicable, shall select a proposal that reasonably demonstrates that the office will provide adequate quality representation for children for whom appointed counsel is required under Section 107.012 or for parents for whom appointed counsel is required under Section 107.013, as applicable.

(c) The total cost of the proposal may not be the sole consideration in selecting a proposal.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.067 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.258. PLAN OF OPERATION FOR OFFICE

The applicable commissioners court or commissioners courts shall require a written plan of operation from an entity serving as an office of child representation or office of parent representation. The plan must include:

(1) a budget for the office, including salaries;

(2) a description of each personnel position, including the chief counsel position;

(3) the maximum allowable caseloads for each attorney employed by the office;

(4) provisions for training personnel and attorneys employed by the office;

(5) a description of anticipated overhead costs for the office;

(6) policies regarding the use of licensed investigators and expert witnesses by the office; and

(7) a policy to ensure that the chief of the office and other attorneys employed by the office do not provide representation to a child, a parent, or an alleged father, as applicable, if doing so would create a conflict of interest.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.068 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.259. OFFICE PERSONNEL

(a) An office of child representation or office of parent representation must be directed by a chief counsel who:

(1) is a member of the State Bar of Texas;

(2) has practiced law for at least three years; and

(3) has substantial experience in the practice of child welfare law.

(b) An office of child representation or office of parent representation may employ attorneys, licensed investigators, licensed social workers, and other personnel necessary to perform the duties of the office as specified by the commissioners court or commissioners courts.

(c) An attorney for the office of child representation or office of parent representation must comply with any applicable continuing education and training requirements of Sections 107.004 and 107.0131 before accepting representation.

(d) Except as authorized by this chapter, the chief counsel and other attorneys employed by an office of child representation or office of parent representation may not:

(1) engage in the private practice of child welfare law; or

(2) accept anything of value not authorized by this chapter for services rendered under this chapter.

(e) A judge may remove from a case a person who violates Subsection (d).

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.069 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.260. APPOINTMENTS IN COUNTY IN WHICH OFFICE CREATED

(a) If there is an office of child representation or office of parent representation serving a county, a court in that county shall appoint for a child or parent, as applicable, an attorney from the office in a suit filed in the county by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child, unless there is a conflict of interest or other reason to appoint a different attorney from the list maintained by the court of attorneys qualified for appointment under Section 107.012 or 107.013.

(b) An office of child representation or office of parent representation may not accept an appointment if:

(1) a conflict of interest exists;

(2) the office has insufficient resources to provide adequate representation;

(3) the office is incapable of providing representation in accordance with the rules of professional conduct;

(4) the appointment would require one or more attorneys at the office to have a caseload that exceeds the maximum allowable caseload; or

(5) the office shows other good cause for not accepting the appointment.

(c) An office of parent representation may investigate the financial condition of any person the office is appointed to represent under Section 107.013. The office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to appointment of representation under Section 107.013.

(d) If it is necessary to appoint an attorney who is not employed by an office of child representation or office of parent representation for one or more parties, the attorney is entitled to the compensation provided by Section 107.015.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.070 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.261. FUNDING OF OFFICE

An office of child representation or office of parent representation is entitled to receive money for personnel costs and expenses incurred in operating as an office in amounts set by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the office serves more than one county.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.071 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

Sec. 107.262. OVERSIGHT BOARD

(a) The commissioners court of a county or the commissioners courts of two or more counties may establish an oversight board for an office of child representation or office of parent representation created in accordance with this subchapter.

(b) A commissioners court that establishes an oversight board under this section shall appoint members of the board. Members may include one or more of the following:

(1) an attorney with substantial experience in child welfare law;

(2) the judge of a trial court having family law jurisdiction in the county or counties for which the office was created;

(3) a county commissioner; and

(4) a county judge.

(c) A commissioners court may delegate to the oversight board any power or duty of the commissioners court to provide oversight of an office of child representation or office of parent representation under this subchapter, including:

(1) recommending selection and removal of a chief counsel of the office;

(2) setting policy for the office; and

(3) developing a budget proposal for the office.

(d) An oversight board established under this section may not access privileged or confidential information.

(e) A judge who serves on an oversight board under this section has judicial immunity in a suit arising from the performance of a power or duty described by Subsection (c).

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.072 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(6), eff. September 1, 2017.

SUBCHAPTER H. MANAGED ASSIGNED COUNSEL PROGRAM FOR THE REPRESENTATION OF CERTAIN CHILDREN AND PARENTS

Sec. 107.301. DEFINITIONS

In this subchapter:

(1) "Governmental entity" includes a county, a group of counties, a department of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

(2) "Program" means a managed assigned counsel program created under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.101 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(7), eff. September 1, 2017.

Sec. 107.302. MANAGED ASSIGNED COUNSEL PROGRAM

(a) A managed assigned counsel program may be operated with public money for the purpose of appointing counsel to provide legal representation and services for a child or parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which appointment is mandatory for a child under Section 107.012 or for a parent under Section 107.013.

(b) The program may be operated by a governmental entity, nonprofit corporation, or local bar association under a written agreement with a governmental entity, other than an individual judge or court.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.102 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(7), eff. September 1, 2017.

Sec. 107.303. CREATION OF MANAGED ASSIGNED COUNSEL PROGRAM

(a) The commissioners court of a county, on written approval of a judge of a statutory county court or a district court having family law jurisdiction in the county, may appoint a governmental entity, nonprofit corporation, or local bar association to operate a managed assigned counsel program for the legal representation of:

(1) a child in a suit in which appointment is mandatory under Section 107.012; or

(2) a parent in a suit in which appointment is mandatory under Section 107.013.

(b) The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a program that provides legal representation for children, parents, or both children and parents.

(c) In appointing an entity to operate a program under this subchapter, the commissioners court shall specify or the commissioners courts shall jointly specify:

(1) the types of cases in which the program may appoint counsel under this section, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.103 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(7), eff. September 1, 2017.

Sec. 107.304. PLAN FOR PROGRAM REQUIRED

The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this subchapter. The plan of operation must include:

(1) a budget for the program, including salaries;

(2) a description of each personnel position, including the program's director;

(3) the maximum allowable caseload for each attorney appointed under the program;

(4) provisions for training personnel of the program and attorneys appointed under the program;

(5) a description of anticipated overhead costs for the program;

(6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;

(7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and

(8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.104 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(7), eff. September 1, 2017.

Sec. 107.305. PROGRAM DIRECTOR; PERSONNEL

(a) Unless a program uses a review committee appointed under Section 107.306, a program under this subchapter must be directed by a person who:

(1) is a member of the State Bar of Texas;

(2) has practiced law for at least three years; and

(3) has substantial experience in the practice of child welfare law.

(b) A program may employ personnel necessary to perform the duties of the program and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.105 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(7), eff. September 1, 2017. Amended by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(3), eff. September 1, 2017.

Sec. 107.306. REVIEW COMMITTEE

(a) The governmental entity, nonprofit corporation, or local bar association operating a program may appoint a review committee of three or more individuals to approve attorneys for inclusion on the program's public appointment list.

(b) Each member of the committee:

(1) must meet the requirements described by Section 107.305(a) for the program director;

(2) may not be employed as a prosecutor; and

(3) may not be included on or apply for inclusion on the public appointment list.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.106 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(7), eff. September 1, 2017. Amended by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(4), eff. September 1, 2017.

Sec. 107.307. APPOINTMENT FROM PROGRAM'S PUBLIC APPOINTMENT LIST

(a) The judge of a county served by a program shall make any appointment required under Section 107.012 or 107.013 in a suit filed in the county by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child from the program's public appointment list, unless there is a conflict of interest or other reason to appoint a different attorney from the list maintained by the court of attorneys qualified for appointment under Section 107.012 or 107.013.

(b) The program's public appointment list from which an attorney is appointed under this section must contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets any applicable requirements, including any education and training programs required under Sections 107.004 and 107.0131; and

(3) is approved by the program director or review committee, as applicable.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.107 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(7), eff. September 1, 2017.

Sec. 107.308. FUNDING OF PROGRAM

(a) A program is entitled to receive money for personnel costs and expenses incurred in amounts set by the commissioners court and paid out of the appropriate county fund or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(b) An attorney appointed under the program is entitled to reasonable fees as provided by Section 107.015.

Added by Acts 2015, 84th Leg., R.S., Ch. 571 (H.B. 3003), Sec. 1, eff. September 1, 2015. Redesignated from Sec. 107.108 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(7), eff. September 1, 2017.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

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Sec. 108.001. TRANSMITTAL OF RECORDS OF SUIT BY CLERK

(a) Except as provided by this chapter, the clerk of the court shall transmit to the vital statistics unit a certified record of the order rendered in a suit, together with the name and all prior names, birth date, and place of birth of the child on a form provided by the unit. The form shall be completed by the petitioner and submitted to the clerk at the time the order is filed for record.

(b) The vital statistics unit shall maintain these records in a central file according to the name, birth date, and place of birth of the child, the court that rendered the order, and the docket number of the suit.

(c) Except as otherwise provided by law, the records required under this section to be maintained by the vital statistics unit are confidential.

(d) In a Title IV-D case, the Title IV-D agency may transmit the record and information specified by Subsection (a) directly to the vital statistics unit. The record and information are not required to be certified if transmitted by the Title IV-D agency under this subsection.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 16, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1390, Sec. 8, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 4, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.034, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 963 (S.B. 1727), Sec. 1, eff. September 1, 2015.

Sec. 108.002. DISSOLUTION OF MARRIAGE RECORDS MAINTAINED BY CLERK

A clerk may not transmit to the central record file the pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 108.003. TRANSMITTAL OF INFORMATION REGARDING ADOPTION

(a) The clerk of a court that renders a decree of adoption shall, not later than the 10th day of the first month after the month in which the adoption is rendered, transmit to the central registry of the vital statistics unit a certified report of adoption that includes:

(1) the name of the adopted child after adoption as shown in the adoption order;

(2) the birth date of the adopted child;

(3) the docket number of the adoption suit;

(4) the identity of the court rendering the adoption;

(5) the date of the adoption order;

(6) the name and address of each parent, guardian, managing conservator, or other person whose consent to adoption was required or waived under Chapter 162, or whose parental rights were terminated in the adoption suit;

(7) the identity of the licensed child placing agency, if any, through which the adopted child was placed for adoption; and

(8) the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee.

(b) Except as otherwise provided by law, for good cause shown, or on an order of the court that granted the adoption or terminated the proceedings under Section 155.001, the records concerning a

child maintained by the district clerk after rendition of a decree of adoption, the records of a child-placing agency that has ceased operations, and the records required under this section to be maintained by the vital statistics unit are confidential, and no person is entitled to access to or information from these records.

(c) If the vital statistics unit determines that a report filed with the unit under this section requires correction, the unit shall mail the report directly to an attorney of record with respect to the adoption. The attorney shall return the corrected report to the unit. If there is no attorney of record, the unit shall mail the report to the clerk of the court for correction.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 17, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 6.16, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 9, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1128, Sec. 3, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.035, eff. April 2, 2015.

Sec. 108.004. TRANSMITTAL OF FILES ON LOSS OF JURISDICTION

On the loss of jurisdiction of a court under Chapter 155, 159, or 262, the clerk of the court shall transmit to the central registry of the vital statistics unit a certified record, on a form provided by the unit, stating that jurisdiction has been lost, the reason for the loss of jurisdiction, and the name and all previous names, date of birth, and place of birth of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 18, eff. Sept. 1, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 5, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.036, eff. April 2, 2015.

Sec. 108.005. ADOPTION RECORDS RECEIVED BY VITAL STATISTICS UNIT

(a) When the vital statistics unit receives a record from the district clerk showing that continuing, exclusive jurisdiction of a child has been lost due to the adoption of the child, the unit shall close the records concerning that child.

(b) An inquiry concerning a child who has been adopted shall be handled as though the child had not previously been the subject of a suit affecting the parent-child relationship.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 19, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1390, Sec. 10, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.037, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.038, eff. April 2, 2015.

Sec. 108.006. FEES

(a) The Department of State Health Services may charge a reasonable fee to cover the cost of determining and sending information concerning the identity of the court with continuing, exclusive jurisdiction.

(b) On the filing of a suit requesting the adoption of a child, the clerk of the court shall collect an additional fee of $15.

(c) The clerk shall send the fees collected under Subsection (b) to the Department of State Health Services for deposit in a special fund in the state treasury from which the legislature may appropriate money only to operate and maintain the central file and central registry of the vital statistics unit.

(d) The receipts from the fees charged under Subsection (a) shall be deposited in a financial institution as determined by the Department of State Health Services and withdrawn as necessary for the sole purpose of operating and maintaining the central record file.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 20, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.039, eff. April 2, 2015.

Sec. 108.007. MICROFILM

(a) The vital statistics unit may use microfilm or other suitable means for maintaining the central record file.

(b) A certified reproduction of a document maintained by the vital statistics unit is admissible in evidence as the original document.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 21, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.040, eff. April 2, 2015.

Sec. 108.008. FILING INFORMATION AFTER DETERMINATION OF PATERNITY

(a) On a determination of paternity, the petitioner shall provide the clerk of the court in which the order was rendered the information necessary to prepare the report of determination of paternity. The clerk shall:

(1) prepare the report on a form provided by the vital statistics unit; and

(2) complete the report immediately after the order becomes final.

(b) On completion of the report, the clerk of the court shall forward to the state registrar a report for each order that became final in that court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 4, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.041, eff. April 2, 2015.

Sec. 108.009. BIRTH CERTIFICATE

(a) The state registrar shall substitute a new birth certificate for the original based on the order in accordance with laws or rules that permit the correction or substitution of a birth certificate for an adopted child or a child whose parents marry each other subsequent to the birth of the child.

(b) The new certificate may not show that the father and child relationship was established after the child's birth but may show the child's actual place and date of birth.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 821, Sec. 2.12, eff. June 14, 2001.

Sec. 108.110. RELEASE OF INFORMATION BY VITAL STATISTICS UNIT

(a) The vital statistics unit shall provide to the Department of Family and Protective Services:

(1) adoption information as necessary for the department to comply with federal law or regulations regarding the compilation or reporting of adoption information to federal officials; and

(2) other information as necessary for the department to administer its duties.

(b) The unit may release otherwise confidential information from the unit's central record files to another governmental entity that has a specific need for the information and maintains appropriate safeguards to prevent further dissemination of the information.

Added by Acts 1999, 76th Leg., ch. 1390, Sec. 11, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.042, eff. April 2, 2015.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 109. APPEALS

Sec. 109.001. TEMPORARY ORDERS DURING PENDENCY OF APPEAL **[amended]** 431

Sec. 109.002. APPELLATE REVIEW 432

Sec. 109.003. PAYMENT FOR COURT REPORTER'S RECORD 433

RESOURCES

Ann Crawford McClure & Chris Nickelson, *Post-Trial and Appellate Deadlines*, Fam. L. Boot Camp (2009).

Georganna L. Simpson, *Appellate and Post-Trial Motions*, Adv. Fam. L. Drafting (2010).

Sec. 109.001. TEMPORARY ORDERS DURING PENDENCY OF APPEAL

(a) In a suit affecting the parent-child relationship, on the motion of any party or on the court's own motion and after notice and hearing, the court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal as the court may deem necessary and equitable. In addition to other matters, an order may:

(1) appoint temporary conservators for the child and provide for possession of the child;

(2) require the temporary support of the child by a party;

(3) enjoin a party from molesting or disturbing the peace of the child or another party;

(4) prohibit a person from removing the child beyond a geographical area identified by the court;

(5) require payment of reasonable and necessary attorney's fees and expenses; or

(6) suspend the operation of the order or judgment that is being appealed.

(b) A temporary order under this section enjoining a party from molesting or disturbing the peace of the child or another party:

(1) may be rendered without:

(A) the issuance of a bond between the **parties** ~~spouses~~; or

(B) an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result; and

(2) is not required to:

(A) define the injury or state why the injury is irreparable; or

(B) include an order setting the suit for trial on the merits with respect to the ultimate relief sought.

(b–1) A motion seeking an original temporary order under this section:

(1) may be filed before trial; and

(2) may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(b–2) The trial court retains jurisdiction to conduct a hearing and sign a temporary order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(b–3) The trial court retains jurisdiction to modify and enforce a temporary order under this section unless the appellate court, on a proper showing, supersedes the court's order.

(b–4) On the motion of a party or on the court's own motion, after notice and hearing, the trial court may modify a previous temporary order rendered under this section if:

(1) the circumstances of a party have materially and substantially changed since the rendition of the previous order; and

(2) modification is equitable and necessary for the safety and welfare of the child.

(b–5) A party may seek review of the trial court's temporary order under this section by:

(1) petition for writ of mandamus; or

(2) proper assignment in the party's brief.

(c) A temporary order rendered under this section is not subject to interlocutory appeal.

(d) The court may not suspend under Subsection (a)(6) the operation of an order or judgment terminating the parent-child relationship in a suit brought by the state or a political subdivision of the state permitted by law to bring the suit.

(e) The remedies provided in this section are cumulative of all other remedies allowed by law.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 539, Sec. 1, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 4, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 554, Sec. 1, eff. Sept. 1, 2019.

Section 2 of Acts 2019, 86th Leg., H.B. 554 states—

"(a) The change in law made by this Act applies only to a temporary order rendered on or after the effective date of this Act.

"(b) Notwithstanding Subsection (a) of this section, the change in law made by this Act applies to a temporary order rendered by a court of competent jurisdiction on or after September 1, 2017, but before the effective date of this Act. The legislature ratifies such an order."

ANNOTATIONS

In re Moore, 511 S.W.3d 278 (Tex. App.—Dallas 2016, orig. proceeding). Writ of mandamus was not exclusive remedy for father's challenge to trial court's order to paying mother's motion for conditional appellate attorney's fees in amount of $52,500, conditioned on father's success on appeal from judgment modifying child support; rather, order was reviewable in conjunction with father's appeal from final judgment modifying child support.

Marcus v. Smith, 313 S.W.3d 408, 416 (Tex. App.—Houston [1st Dist.] 2009, orig. proceeding). A court of appeals lacks jurisdiction over a direct appeal of an award of appellate attorney's fees under this section. The proper remedy to attack a temporary order under this section is mandamus.

In re Gonzalez, 981 S.W.2d 313, 314 (Tex. App.—San Antonio 1998, pet. denied). The trial court retains jurisdiction to enforce an order or judgment that is being appealed even after the thirty-day window after the appeal has been perfected. The trial court retains jurisdiction to enforce its orders whenever the obligor-parent fails to pay child support.

Sec. 109.002. APPELLATE REVIEW

(a) An appeal from a final order rendered in a suit, when allowed under this section or under other provisions of law, shall be as in civil cases generally under the Texas Rules of Appellate Procedure, except that an appeal from a final order rendered under Subchapter D, Chapter 152, must comply with Section 152.314.

(a–1) An appeal in a suit in which termination of the parent-child relationship is ordered shall be given precedence over other civil cases by the appellate courts, shall be accelerated, and shall follow the procedures for an accelerated appeal under the Texas Rules of Appellate Procedure.

(b) An appeal may be taken by any party to a suit from a final order rendered under this title.

(c) An appeal from a final order, with or without a supersedeas bond, does not suspend the order unless suspension is ordered by the court rendering the order. The appellate court, on a proper showing, may permit the order to be suspended, unless the order provides for the termination of the parent-child relationship in a suit brought by the state or a political subdivision of the state permitted by law to bring the suit.

(d) On the motion of the parties or on the court's own motion, the appellate court in its opinion may identify the parties by fictitious names or by their initials only.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.17, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 421, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 539, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 75 (H.B. 906), Sec. 3, eff. September 1, 2011; Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Secs. 5, 6, eff. Sept. 1, 2017.

ANNOTATIONS

In re K.S.L., 538 S.W.3d 107 (Tex. 2017). Precluding parents from challenging, on appeal, factual and legal sufficiency of the trial court's best-interest determination at child protection proceeding, on basis that parents had executed affidavits of voluntary relinquishment waiving their parental rights, did not violate parents' constitutional due-process rights.

In re K.A.F., 160 S.W.3d 923, 925 (Tex. 2005), *cert. denied sub nom. Carroll v. Faucheux*, 546 U.S. 961 (2005). Tex. R. App. P. 26.1 applies in an appeal of a parental rights termination case and requires that the notice of appeal be filed within twenty days after the judgment or order is signed.

Sec. 109.003. PAYMENT FOR COURT REPORTER'S RECORD

(a) If the party requesting a court reporter's record in an appeal of a suit has filed an affidavit stating the party's inability to pay costs as provided by Rule 20, Texas Rules of Appellate Procedure, and the affidavit is approved by the trial court, the trial court may order the county in which the trial was held to pay the costs of preparing the court reporter's record.

(b) Nothing in this section shall be construed to permit an official court reporter to be paid more than once for the preparation of the court reporter's record.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 472, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 5.0025, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 7, eff. Sept. 1, 2017.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 110. COURT FEES

Sec. 110.001. GENERAL RULE 435

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Sec. 110.005. TRANSFER FEE 435

Sec. 110.006. DOMESTIC RELATIONS OFFICE OPERATIONS FEES AND CHILD SUPPORT SERVICE FEES 436

Sec. 110.001. GENERAL RULE

Except as provided by this chapter, fees in a matter covered by this title shall be as in civil cases generally.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 110.002. FILING FEES AND DEPOSITS

(a) The clerk of the court may collect a filing fee of $15 in a suit for filing:

(1) a suit or motion for modification;

(2) a motion for enforcement;

(3) a notice of application for judicial writ of withholding;

(4) a motion to transfer;

(5) a petition for license suspension;

(6) a motion to revoke a stay of license suspension; or

(7) a motion for contempt.

(b) No other filing fee may be collected or required for an action described in this section.

(c) The clerk may collect a deposit as in other cases, in the amount set by the clerk for payment of expected costs and other expenses arising in the proceeding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 976, Sec. 6, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 268, Sec. 1, eff. Sept. 1, 2003.

Sec. 110.003. NO SEPARATE OR ADDITIONAL FILING FEE

The clerk of the court may not require:

(1) a separate filing fee in a suit joined with a suit for dissolution of marriage under Title 1; or

(2) an additional filing fee if more than one form of relief is requested in a suit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 110.004. FEE FOR ISSUING AND DELIVERING WITHHOLDING ORDER OR WRIT

The clerk of the court may charge a reasonable fee, not to exceed $15, for each order or writ of income withholding issued by the clerk and delivered to an employer.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 9, eff. Sept. 1, 1997.

Sec. 110.005. TRANSFER FEE

(a) The fee for filing a transferred case is $45 payable to the clerk of the court to which the case is transferred. No portion of this fee may be sent to the state.

(b) A party may not be assessed any other fee, cost, charge, or expense by the clerk of the court or other public official in connection with filing of the transferred case.

(c) The fee limitation in this section does not affect a fee payable to the court transferring the case.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 110.006. DOMESTIC RELATIONS OFFICE OPERATIONS FEES AND CHILD SUPPORT SERVICE FEES

(a) If an administering entity of a domestic relations office adopts an initial operations fee under Section 203.005(a)(1), the clerk of the court shall:

(1) collect the operations fee at the time the original suit, motion for modification, or motion for enforcement, as applicable, is filed; and

(2) send the fee to the domestic relations office.

(b) If an administering entity of a domestic relations office adopts an initial child support service fee under Section 203.005(a)(2), the clerk of the court shall:

(1) collect the child support service fee at the time the original suit is filed; and

(2) send the fee to the domestic relations office.

(c) The fees described by Subsections (a) and (b) are not filing fees for purposes of Section 110.002 or 110.003.

Added by Acts 1997, 75th Leg., ch. 702, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 5, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 3, eff. June 19, 2009. Acts 2009, 81st Leg., R.S., Ch. 1035 (H.B. 4424), Sec. 1, eff. June 19, 2009.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 111. GUIDELINES FOR POSSESSION AND CHILD SUPPORT

Sec. 111.001. REVIEW OF GUIDELINES 438

Sec. 111.002. GUIDELINES SUPERSEDE COURT RULES 438

Sec. 111.003. POSTING GUIDELINES 438

Sec. 111.001. REVIEW OF GUIDELINES

(a) Prior to each regular legislative session, the standing committees of each house of the legislature having jurisdiction over family law issues shall review and, if necessary, recommend revisions to the guidelines for possession of and access to a child under Chapter 153. The committee shall report the results of the review and shall include any recommended revisions in the committee's report to the legislature.

(b) At least once every four years, the Title IV-D agency shall review the child support guidelines under Chapter 154 as required by 42 U.S.C. Section 667(a) and report the results of the review and any recommendations for any changes to the guidelines and their manner of application to the standing committees of each house of the legislature having jurisdiction over family law issues.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 6, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 8 (S.B. 716), Sec. 1, eff. September 1, 2011.

Sec. 111.002. GUIDELINES SUPERSEDE COURT RULES

(a) The guidelines in this title supersede local court rules and rules of the supreme court that conflict with the guidelines.

(b) Notwithstanding other law, the guidelines may not be repealed or modified by a rule adopted by the supreme court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 111.003. POSTING GUIDELINES

A copy of the guidelines for possession of and access to a child under Chapter 153 and a copy of the guidelines for the support of a child under Chapter 154 shall be prominently displayed at or near the entrance to the courtroom of every court having jurisdiction of a suit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE B. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 151. RIGHTS AND DUTIES IN PARENT-CHILD RELATIONSHIP

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Sec. 151.002. RIGHTS OF A LIVING CHILD AFTER AN ABORTION OR PREMATURE BIRTH; CIVIL PENALTY; CRIMINAL OFFENSE **[amended]** 442

Sec. 151.003. LIMITATION ON STATE AGENCY ACTION 443

Sec. 151.001. RIGHTS AND DUTIES OF PARENT

(a) A parent of a child has the following rights and duties:

(1) the right to have physical possession, to direct the moral and religious training, and to designate the residence of the child;

(2) the duty of care, control, protection, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education;

(4) the duty, except when a guardian of the child's estate has been appointed, to manage the estate of the child, including the right as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

(5) except as provided by Section 264.0111, the right to the services and earnings of the child;

(6) the right to consent to the child's marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment;

(7) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;

(9) the right to inherit from and through the child;

(10) the right to make decisions concerning the child's education; and

(11) any other right or duty existing between a parent and child by virtue of law.

(b) The duty of a parent to support his or her child exists while the child is an unemancipated minor and continues as long as the child is fully enrolled in a secondary school in a program leading toward a high school diploma and complies with attendance requirements described by Section 154.002(a)(2).

(c) A parent who fails to discharge the duty of support is liable to a person who provides necessaries to those to whom support is owed.

(d) The rights and duties of a parent are subject to:

(1) a court order affecting the rights and duties;

(2) an affidavit of relinquishment of parental rights; and

(3) an affidavit by the parent designating another person or agency to act as managing conservator.

(e) Only the following persons may use corporal punishment for the reasonable discipline of a child:

(1) a parent or grandparent of the child;

(2) a stepparent of the child who has the duty of control and reasonable discipline of the child; and

(3) an individual who is a guardian of the child and who has the duty of control and reasonable discipline of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 23, eff. Sept. 1, 1995. Renumbered from Sec. 151.003 by Acts 2001, 77th Leg., ch. 821, Sec. 2.13, eff. June 14, 2001. Amended by Acts 2001, 77th Leg., ch. 964, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1036, Sec. 3, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 924 (H.B. 383), Sec. 1, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 6, eff. September 1, 2007.

COMMENTS

The listing of parental rights and duties is a legislative codification of custom, practice, and social mores in statutory form. The cross-reference in subsection 151.001(a)(5) clarifies that a child in foster or state care is solely entitled to the child's earnings during such time and that on return to the child's parents, such monies remain the sole and separate property of the child.

ANNOTATIONS

Tucker v. Thomas, 419 S.W.3d 292, 300 (Tex. 2013). "The plain language of section 151.001(c) does not support the court of appeals' conclusion that section 151.001(c) may be used as a vehicle for awarding attorney's fees in non-enforcement modification suits as necessaries or as additional child support. Section 151.001(c) conditions a parent's liability for necessaries upon a parent's failure to discharge a duty of support. Failure to support the child is not the basis for a non-enforcement modification suit under Chapter 156."

Miller v. HCA, Inc., 118 S.W.3d 758, 766 (Tex. 2003). Parents' right to consent to their child's medical care and surgical treatment includes the right not to consent or to refuse certain medical care.

Rogers v. Rogers, No. 01-15-00224-CV, 2016 WL 3162299 (Tex. App.—Houston [1st Dist.] June 2, 2016, no pet.) (mem. op.). The trial court retains broad discretion in crafting the rights and duties of each conservator. Allocating the right to make educational decisions to mother when father was named primary parent joint managing conservator did not contravene the jury's verdict but merely limited the mother's right to choose schools within the geographic area designated for the children's residence.

Moreno v. Perez, 363 S.W.3d 725, 740 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Unless limited by court order, a parent has a right to use corporal punishment as reasonable discipline.

In re J.W.B., 294 S.W.3d 873, 885 (Tex. App.—Beaumont 2009, no pet.) (Kreger, J., dissenting). Payment of mortgage and utility expenses for the residence where a child lived fell under father's statutory duty to support the child by providing shelter under subsection 151.001(a)(3) and could not be considered "actual support" to support an offset against his child support arrearages.

In re Collins, 242 S.W.3d 837 (Tex. App.—Houston [14th Dist.] 2007, orig. proceeding). A trial court erred when it appointed an amicus attorney as a child's next friend, instead of appointing the child's father. A parent's right to establish the child's residence and represent the child in legal actions terminates upon that parent's death. Unless otherwise established by court order, the surviving parent would then acquire the right to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child as provided in subsection 151.001(a)(7).

Alameda v. State, 181 S.W.3d 772 (Tex. App.—Fort Worth 2005), *aff'd*, 235 S.W.3d 218 (Tex. Crim. App. 2007). A parent's duty of care, control, and protection under subsection 151.001(a)(2) and a parent's right to make decisions of substantial legal significance for the child under subsection 151.001(a)(7) authorize a parent to vicariously consent to a recording of the child's telephone conversations if the parent has a good-faith basis for believing that the taping will be in the child's best interest.

RESOURCES

Rebecca L. Armstrong & Rick Robertson, *Conservatorship Basics*, Marriage Dissolution 101 (2011).

Barbara J. Elias-Perciful, *Constitutional Rights of Children*, Adv. Fam. L. (2010).

Holly O'Neal Rumbaugh, *Miller v. HCA, Inc.: Disempowering Parents from Making Medical Treatment Decisions for Severely Premature Babies*, 41 Hous. L. Rev. 675 (2004).

Sec. 151.002. RIGHTS OF A LIVING CHILD AFTER AN ABORTION OR PREMATURE BIRTH; CIVIL PENALTY; CRIMINAL OFFENSE

(a) A living human child born alive after an abortion or premature birth is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive after the normal gestation period.

(b) In this code, "born alive" means the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Each product of the birth is considered born alive.

(c) For purposes of this section, a physician-patient relationship is established between a child born alive after an abortion and the physician who performed or attempted to perform the abortion. The physician must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious physician would render to any other child born alive at the same gestational age. In this subsection, "professional skill, care, and diligence" includes a requirement that the physician who performed or attempted the abortion ensure that the child born alive be immediately transferred to a hospital.

(d) A woman on whom an abortion, as defined by Section 245.002, Health and Safety Code, is performed or attempted to be performed may not be held liable under this section.

(e) A physician who violates Subsection (c) by failing to provide the appropriate medical treatment to a child born alive after an abortion or an attempted abortion is liable to the state for a civil penalty of not less than $100,000. The attorney general may bring a suit to collect the penalty. In addition to the civil penalty, the attorney general may recover reasonable attorney's fees. The civil penalty described in this subsection is in addition to any other recovery authorized under other law.

(f) A person who has knowledge of a failure to comply with this section shall report to the attorney general. The identity and any personally identifiable information of the person reporting the failure to comply with this section is confidential under Chapter 552, Government Code.

(g) A physician or health care practitioner who violates Subsection (c) by failing to provide the appropriate medical treatment to a child born alive after an abortion or an attempted abortion commits an offense. An offense under this subsection is a felony of the third degree.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Sec. 151.004 by Acts 2001, 77th Leg., ch. 821, Sec. 2.13, eff. June 14, 2001. Amended by Acts 2019, 86th Leg., H.B. 16, Secs. 1, 2, eff. Sept. 1, 2019.

Sections 3 and 4 of Acts 2019, 86th Leg., H.B. 16 state—

"Section 151.002, Family Code, as amended by this Act, applies only to a child born alive on or after the effective date of this Act.

"The change in law made by this Act applies only to the prosecution of an offense committed on or after the effective date of this Act. The prosecution of an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

ANNOTATIONS

HCA, Inc. v. Miller, 36 S.W.3d 187, 194 (Tex. App.—Houston [14th Dist.] 2000), *aff'd*, 118 S.W.3d 758 (Tex. 2003). "[I]n Texas, a child born alive after a premature birth (or abortion) is entitled to the same rights as are granted by the State to any other child born alive after normal gestation."

RESOURCES

Holly O'Neal Rumbaugh, *Miller v. HCA, Inc.: Disempowering Parents from Making Medical Treatment Decisions for Severely Premature Babies*, 41 Hous. L. Rev. 675 (2004).

Sec. 151.003. LIMITATION ON STATE AGENCY ACTION

A state agency may not adopt rules or policies or take any other action that violates the fundamental right and duty of a parent to direct the upbringing of the parent's child.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 6.18(a), eff. Sept. 1, 1999. Renumbered from Sec. 151.005 by Acts 2001, 77th Leg., ch. 821, Sec. 2.13, eff. June 14, 2001.

ANNOTATIONS

Rogers v. Department of Family & Protective Services, 175 S.W.3d 370 (Tex. App.—Houston [1st Dist.] 2005, pet. dism'd w.o.j.). Section 151.003 does not apply to a situation in which the question of whether parental rights should be terminated is being determined.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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Sec. 152.317. COSTS AND EXPENSES 475

RESOURCES

Patricia Nellenbach Carter, *UCCJEA and UIFSA: Alphabet Soup Revisited*, Marriage Dissolution (2013).

SUBCHAPTER A. APPLICATION AND CONSTRUCTION

Sec. 152.001. APPLICATION AND CONSTRUCTION

This chapter shall be applied and construed to promote the uniformity of the law among the states that enact it.

Amended by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.002. CONFLICTS BETWEEN PROVISIONS

If a provision of this chapter conflicts with a provision of this title or another statute or rule of this state and the conflict cannot be reconciled, this chapter prevails.

Amended by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 152.101. SHORT TITLE

This chapter may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 1. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.102. DEFINITIONS

In this chapter:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained 18 years of age.

(3) "Child custody determination" means a judgment, decree, or other order of a court providing for legal custody, physical custody, or visitation with respect to a child. The term includes permanent, temporary, initial, and modification orders. The term does not include an order relating to child support or another monetary obligation of an individual.

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Subchapter D.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceed-

ing. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or a person acting as a parent. A period of temporary absence of a parent or a person acting as a parent is part of the period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Legal custody" means the managing conservatorship of a child.

(12) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(13) "Person acting as a parent" means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.

(16) "Visitation" means the possession of or access to a child.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 102. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re H.S., 550 S.W.3d 151, 158 (Tex. 2018). Subsections 152.102(11) and 152.102(14) differentiate between "legal custody," which is defined as managing conservatorship, and "physical custody," which is the physical care and supervision of a child.

Powell v. Stover, 165 S.W.3d 322, 326 (Tex. 2005). The word "lived" connotes physical presence in the context of the UCCJEA provision that a state has jurisdiction over a child custody proceeding if that state was one in which a child lived with a parent for at least six consecutive months immediately before the commencement of a proceeding. *See also In re Marriage of Marsalis*, 338 S.W.3d 131 (Tex. App.—Texarkana 2011, no pet.).

In re T.B., 497 S.W.3d 640 (Tex. App.—Fort Worth 2016, pet. denied). Under subsection 152.102(4), "child custody proceeding" includes an action for paternity.

In re M.S.C., No. 05-14-01581-CV, 2016 WL 929218 (Tex. App.—Dallas Mar. 11, 2016, no pet.) (mem. op.). Under subsection 152.102(3), "child custody determination" does not include an order relating to child support or any other monetary obligation of an individual, including travel expenses related to the exercise of visitation. *See also In re C.R.-A.A.*, 521 S.W.3d 893 (Tex. App.—San Antonio 2017, no pet.).

Arnold v. Price, 365 S.W.3d 455 (Tex. App.—Fort Worth 2011, no pet.). A child's home state, for determination of jurisdiction over child custody issues under the UCCJEA, is determined as of the date of the commencement of the child custody suit. *See also In re Milton*, 420 S.W.3d 245, 251 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding).

Berwick v. Wagner, 336 S.W.3d 805 (Tex. App.—Houston [1st Dist.] 2011, pet. denied). An unborn child is a "child" if a state's law permits prebirth legal proceedings concerning the child such as petitions to establish parentage. In cases in which the state of the prebirth suit and the "home state" of the child are one and the same, courts have recognized that UCCJEA petitions can be filed prebirth with any jurisdictional analysis reserved for postbirth.

Waltenburg v. Waltenburg, 270 S.W.3d 308 (Tex. App.—Dallas 2008, no pet.). An unborn child is not a "child" as defined by subsection 157.102(2)—"an individual who has not attained 18 years of age."

Coots v. Leonard, 959 S.W.2d 299 (Tex. App.—El Paso 1997, no pet.). Under the UCCJA, the precursor to the UCCJEA, the phrase custody determination as used in the hierarchy of jurisdiction was defined as a court decision providing for the custody of a child, including visitation rights, but "custody" means managing conservatorship of a child. Therefore, custody and visitation are treated differently with regard to a trial court's ability to exercise continuing jurisdiction to modify an order.

Yavapai–Apache Tribe v. Mejia, 906 S.W.2d 152 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding). For purposes of the Indian Child Welfare Act, a "child custody proceeding" includes foster-care matters, termination of parental rights, preadoptive placements, and adoptive placements, but it does not include divorce or juvenile delinquency proceedings.

Bruneio v. Bruneio, 890 S.W.2d 150 (Tex. App.—Corpus Christi 1994, no writ). Under the UCCJA, the precursor to the UCCJEA, a Texas court could decide child-custody matters if Texas were the "home state" of the child, the state in which the child had lived with a parent for the past six months, on the date of the commencement of the proceeding.

RESOURCES

Janet McCullar Vavra & Jimmy Vaught, *Practice Tips for Handling UCCJEA Cases*, Marriage Dissolution (2010).

JoAl Cannon Sheridan, *Ding! You Are Now Free to Move About the Country*, Adv. Fam. L. (2011).

Sec. 152.103. PROCEEDINGS GOVERNED BY OTHER LAW

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 103. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.104. APPLICATION TO INDIAN TRIBES

(a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.) is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this subchapter and Subchapter C.

(c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Subchapter D.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 104. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

Villareal v. Villareal, No. 04-15-00551-CV, 2016 WL 4124067, at *3 (Tex. App.—San Antonio Aug. 3, 2016, no pet.) (mem. op.). Because the Indian Child Welfare Act's definition of child custody proceeding did not include divorce proceedings, ICWA was inapplicable, and the tribe was treated as if it were a state of the United States for UCCJEA jurisdictional purposes.

Yavapai–Apache Tribe v. Mejia, 906 S.W.2d 152 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding). For purposes of the Indian Child Welfare Act, a "child custody proceeding" includes foster-care matters, termination of parental rights, preadoptive placements, and adoptive placements, but it does not include divorce or juvenile delinquency proceedings.

Sec. 152.105. INTERNATIONAL APPLICATION OF CHAPTER

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this subchapter and Subchapter C.

(b) Except as otherwise provided in Subsection (c), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Subchapter D.

(c) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

(d) A record of all of the proceedings under this chapter relating to a child custody determination made in a foreign country or to the enforcement of an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction shall be made by a court reporter or as provided by Section 201.009.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 92 (S.B. 1490), Sec. 1, eff. September 1, 2011.

COMMENTS

This section is similar to UCCJEA § 105. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re Y.M.A., 111 S.W.3d 790 (Tex. App.—Fort Worth 2003, no pet.). Egypt was a child's home state for purposes of the UCCJEA. Thus, the Egyptian court had jurisdiction over a child custody proceeding when, before the husband's filing for divorce, the wife filed suit seeking custody in Egypt; the husband was served, but did not appear; the family lived in Egypt within six months before commencement of the wife's proceeding; and, after the husband removed the child to Texas, the wife continued to live in Egypt.

Koester v. Montgomery, 886 S.W.2d 432 (Tex. App.—Houston [14th Dist.] 1994, orig. proceeding). The UCCJA, the precursor to the UCCJEA, applied to foreign proceedings if basic due-process notions of notice were followed.

Sec. 152.106. EFFECT OF CHILD CUSTODY DETERMINATION

A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 152.108 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 106. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.107. PRIORITY

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 107. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.108. NOTICE TO PERSONS OUTSIDE STATE

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 108. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

Livanos v. Livanos, 333 S.W.3d 868, 876–77 (Tex. App.—Houston [1st Dist.] 2010, no pet.). Under the UCCJEA, before a trial court can make a child custody determination, notice and an opportunity to be heard must be given under the standards of section 152.108. The only mandatory requirement under the UCCJEA is that notice be given in a manner that is reasonably calculated to give actual notice.

Razo v. Vargas, 355 S.W.3d 866 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Subsection 152.108(a) permits service on an individual by publication under Texas rules but only if "other means" of service are not effective.

RESOURCES

Linda Bustamante Specht, *State Jurisdiction in Divorce Actions Involving a Non-Resident Spouse*, 16 St. Mary's L.J. 211 (1984).

Sec. 152.109. APPEARANCE AND LIMITED IMMUNITY

(a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowed under the laws of that state.

(c) The immunity granted by Subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 109. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.110. COMMUNICATION BETWEEN COURTS

(a) In this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(b) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(c) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(d) If proceedings involving the same parties are pending simultaneously in a court of this state and a court of another state, the court of this state shall inform the other court of the simultaneous proceedings. The court of this state shall request that the other court hold the proceeding in that court in abeyance until the court in this state conducts a hearing to determine whether the court has jurisdiction over the proceeding.

(e) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(f) Except as otherwise provided in Subsection (e), a record must be made of any communication under this section. The parties must be informed promptly of the communication and granted access to the record.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 329, Sec. 1, eff. May 24, 2001.

COMMENTS

This section is similar to UCCJEA § 110. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re Milton, 420 S.W.3d 245 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding). When determining if it will decline its jurisdiction based on section 152.207, a Texas court may communicate with a court in another state concerning a proceeding arising under the UCCJEA. The court may allow the parties to participate in the communication, and if they are not able to participate in the communication, "they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. . . .For this purpose, the court *shall* allow the parties to submit information and *shall* consider all relevant factors."

Sec. 152.111. TAKING TESTIMONY IN ANOTHER STATE

(a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowed in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 111. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS

(a) A court of this state may request the appropriate court of another state to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that state;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in Subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under Subsections (a) and (b) may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 112. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

SUBCHAPTER C. JURISDICTION

Sec. 152.201. INITIAL CHILD CUSTODY JURISDICTION

(a) Except as otherwise provided in Section 152.204, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under Subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 152.207 or 152.208, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under Subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 152.207 or 152.208; or

(4) no court of any other state would have jurisdiction under the criteria specified in Subdivision (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 201. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re Dean, 393 S.W.3d 741 (Tex. 2012, orig. proceeding). Subsection 152.201(a) was not unconstitutional when a Texas court deferred jurisdiction over a child to New Mexico where the child was born and lived his entire life.

Powell v. Stover, 165 S.W.3d 322, 326 (Tex. 2005). The word "lived" strongly connotes physical presence in the context of the UCCJEA provision that a state has jurisdiction over a child custody proceeding if that state was one in which a child lived with a parent for at least six consecutive months immediately before the commencement of a proceeding. Subjective intent regarding residency of the parents or child is not relevant to a determination of home state.

In re S.A.V., 837 S.W.2d 80 (Tex. 1992). Generally, a family relationship is among those matters in which a forum state has such a strong interest that its courts may reasonably make an adjudication affecting that relationship even though one of the parties to the relationship may have had no personal contacts with forum state. To establish personal jurisdiction in Texas, the nonresident must have purposely established minimum contacts with Texas, meaning that there must be a substantial connection between a nonresident defendant and Texas arising from action or conduct that nonresident defendant purposely directed toward Texas.

In re S.A.H., 465 S.W.3d 662 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Trial court correctly declared a 2007 agreed order establishing parentage void because the evidence established that at the time of the order, the trial court had no subject matter jurisdiction because the child had lived only in Mexico.

In re Green, 352 S.W.3d 772 (Tex. App.—San Antonio 2011, orig. proceeding). A trial court lacked jurisdiction over a SAPCR when Texas was not the child's home state and the child's mother did not assert that Germany, where she and child resided, lacked home state jurisdiction or that Germany had declined to exercise jurisdiction on the ground that Texas was the more appropriate forum.

In re S.J.A., 272 S.W.3d 678 (Tex. App.—Dallas 2008, no pet.). The UCCJEA gives priority jurisdiction to the child's home state, which courts will determine by focusing on the child's physical presence in the state.

In re Burk, 252 S.W.3d 736 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). A Colorado court in which a child custody proceeding was first filed did not have jurisdiction in substantial conformity with the UCCJEA to make an initial child custody determination because Texas was the child's home state; therefore, the Texas court was not precluded by the simultaneous proceedings section of the UCCJEA from exercising jurisdiction.

Lemley v. Miller, 932 S.W.2d 284 (Tex. App.—Austin 1996, no writ) (per curiam). Satisfaction of the child custody determination statutory provisions confers subject matter jurisdiction over a custody case as well as personal jurisdiction over a nonresident parent.

Link v. Alvarado, 929 S.W.2d 674 (Tex. App.—San Antonio 1996, writ dism'd w.o.j.). The UCCJA, the precursor to the UCCJEA, was the appropriate statute when child custody matters were at issue, but when a party seeks to modify a support order issued by another state, the Uniform Interstate Family Support Act applies, and the party seeking to modify support order from another state must establish jurisdiction pursuant to the act.

Bruneio v. Bruneio, 890 S.W.2d 150 (Tex. App.—Corpus Christi 1994, no writ). The family relationship is among those matters in which the forum state has such a strong interest that its courts may reasonably make an adjudication affecting that relationship even though one of the parties may have had no personal contacts with the state. In such a situation, a state's interest in a child's welfare outweighs the nonresident parent's interest in avoiding the burden and inconvenience of defending the suit in Texas.

Green v. McCoy, 870 S.W.2d 616 (Tex. App.—El Paso 1994, orig. proceeding). Jurisdiction can be established over a nonresident parent in a custody dispute under the UCCJA, the precursor to the Texas UCCJEA, by demonstrating that Texas has become the child's home state.

Abderholden v. Morizot, 856 S.W.2d 829 (Tex. App.—Austin 1993, no writ) (per curiam). A custody determination is a status adjudication that is not dependent on personal jurisdiction over the parents, thus whether the district court acquired personal jurisdiction over the mother does not decide the issue of whether the court has subject matter jurisdiction. Subject matter jurisdiction in custody matters is determined by reference to the UCCJA, the precursor to the UCCJEA.

Perry v. Ponder, 604 S.W.2d 306 (Tex. Civ. App.—Dallas 1980, no writ). Due process limitations applied to the exercise of subject matter jurisdiction under this section, which established the "principal residence of the child" as one ground for jurisdiction in a SAPCR.

RESOURCES

James P. George & Anna K. Teller, *Annual Survey of Texas Law: Conflicts of Laws*, 58 S.M.U. L. Rev. 679 (2005).

John J. Sampson & Harry L. Tindall, *The UCCJA Comes to Texas—As Amended, Integrated and Improved*, 46 Tex. B.J. 1096 (1983).

Steven M. Schuetze, *Thompson v. Thompson: The Jurisdictional Dilemma of Child Custody Cases Under the Parental Kidnapping Prevention Act*, 16 Pepp. L. Rev. 409 (1989).

Wayne Young, *Parental Child-Snatching: Out of a No-Man's-Land of Law*, 13 St. Mary's L.J. 337 (1981).

Sec. 152.202. EXCLUSIVE CONTINUING JURISDICTION

(a) Except as otherwise provided in Section 152.204, a court of this state which has made a child custody determination consistent with Section 152.201 or 152.203 has exclusive continuing jurisdiction over the determination until:

(1) a court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent, have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(2) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 152.201.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 202. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re Forlenza, 140 S.W.3d 373 (Tex. 2004, orig. proceeding). Children had a significant connection with Texas sufficient to support the trial court's exclusive, continuing jurisdiction over a child custody modification proceeding because the mother resided in Texas, the children visited their mother in Texas, numerous other relatives resided in Texas and maintained a relationship with the children, and the mother had a close relationship with the children.

Little v. Daggett, 858 S.W.2d 368 (Tex. 1993, orig. proceeding) (per curiam). When a trial court has dismissed a divorce suit for want of prosecution without entering an order on custody or visitation, the court lacks continuing jurisdiction over custody or visitation matters.

In re Lewin, 149 S.W.3d 727 (Tex. App.—Austin 2004, orig. proceeding). A trial court did not retain exclusive continuing jurisdiction over a father's SAPCR when the child's "home state" under the UCCJEA had become New Jersey because the original SAPCR order granted the mother the right to determine child's primary residence, the mother resided with the child in New Jersey, and the time the child spent in Texas and Canada during visitation with the father, or the times the father wrongfully retained the child, were nothing more than "temporary absences" from New Jersey.

Saavedra v. Schmidt, 96 S.W.3d 533 (Tex. App.—Austin 2002, no pet.). Pursuant to the UCCJEA, California, which was the home state of the children and where the ex-husband continued to reside, retained exclusive continuing jurisdiction over child custody matters and was the only state that could determine whether it would continue to exercise that jurisdiction. Absent the California court's relinquishment of that exclusive continuing jurisdiction, the courts in Texas, where the children and ex-wife now resided, were without jurisdiction to modify the California court's custody determination.

In re Poole, 975 S.W.2d 342 (Tex. App.—Amarillo 1998, no pet.). The UCCJA, the precursor to the UCCJEA, deprived a Texas court of continuing jurisdiction to make a custody determination because Colorado had become the child's home state after the child and her mother had lived there for six months. However, the parties' agreed divorce decree, which provided that the court would exercise its continuing jurisdiction in all future proceedings to modify custody, child support, and visitation of the parties' child, constituted a "written agreement" for the court to exercise its continuing jurisdiction.

Coots v. Leonard, 959 S.W.2d 299 (Tex. App.—El Paso 1997, no pet.). The Family Code explicitly contemplated that Texas courts would retain jurisdiction over issues relating to a noncustodial parent's possession of or access to a child even when the managing conservator relocates outside the state.

Welborn-Hosler v. Hosler, 870 S.W.2d 323 (Tex. App.—Houston [14th Dist.] 1994, no writ). Under the PKPA, a Texas court continued to have jurisdiction over visitation when the father remained a Texas resident (even though he

was stationed in California by the military) because, even though Texas no longer had jurisdiction over "custody" because the child had resided in North Carolina for six months, the legislature did not include visitation within the custody exception to Texas's continuing jurisdiction.

Abderholden v. Morizot, 856 S.W.2d 829 (Tex. App.—Austin 1993, no writ) (per curiam). A court's continuing jurisdiction to modify a child custody determination is precluded if the child and the parent with custody have established another home state unless the other parent filed suit to modify custody before the child acquired the new home state or all parties agreed to jurisdiction in writing.

Henry v. Rivera, 783 S.W.2d 766 (Tex. App.—San Antonio 1990, orig. proceeding) (per curiam). Absent written agreement of all parties, a Texas court must defer a managing conservatorship determination to a court of the child's new home state unless the Texas parent filed suit to modify managing conservatorship before the child acquired a new home state.

Hemingway v. Robertson, 778 S.W.2d 199 (Tex. App.—Houston [1st Dist.] 1989, orig. proceeding). A Texas divorce court could not exercise its continuing jurisdiction to modify visitation because the parent with whom the children were residing had moved with the children to Indiana. It was immaterial that this parent had previously invoked the jurisdiction of the court by filing a motion to modify visitation because she did not file that motion until after she moved and had since nonsuited it.

Soto-Ruphuy v. Yates, 687 S.W.2d 19 (Tex. App.—San Antonio 1984, orig. proceeding) (per curiam). A trial court lacked jurisdiction to modify the custody provisions of a divorce decree after the mother and child moved to California because California was the child's new home state and the father had not filed suit in the Texas court to modify the divorce decree before California became the child's new home state.

In re M.D.T., 663 S.W.2d 895 (Tex. App.—San Antonio 1983, no writ) (per curiam). When a child's parents divorced in Texas, the divorce decree appointed the father as the managing conservator of the child, and the father at all material times resided in Texas. A California court lacked jurisdiction to grant custody of the child to the mother, who resided in California. The child was not in California when the mother filed suit or at the time of hearing. Although the child temporarily stayed with the mother in California by agreement, the Texas court had not modified the divorce decree.

Sec. 152.203. JURISDICTION TO MODIFY DETERMINATION

Except as otherwise provided in Section 152.204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Section 152.201(a)(1) or (2) and:

(1) the court of the other state determines it no longer has exclusive continuing jurisdiction under Section 152.202 or that a court of this state would be a more convenient forum under Section 152.207; or

(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 203. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re S.J.A., 272 S.W.3d 678 (Tex. App.—Dallas 2008, no pet.). A Texas court had jurisdiction to make an initial custody determination after a father's death when the children's mother lived in Texas, even though the children and their stepmother had lived in Florida with the father for years, because there was no evidence that a Florida court had made a prior child custody determination, neither the children nor the mother lived in Florida at the time the stepmother filed suit in Texas, and the stepmother was not a "person acting as a parent" under Florida law.

In re D.A.P., 267 S.W.3d 485 (Tex. App.—Houston [14th Dist.] 2008, no pet.). In the absence of a record, a court of appeals will presume that sufficient evidence was presented to a trial court to establish subject matter jurisdiction. A

mother's statements and arguments in her brief that she lived in Washington with the child were not evidence. Neither the father's nor the mother's pleadings affirmatively negated the jurisdiction of the Texas court to modify a Washington court's custody order.

In re S.L.P., 123 S.W.3d 685 (Tex. App.—Fort Worth 2003, no pet.). A Texas court had jurisdiction to modify a Nevada court's initial child custody determination when the terminated mother and the children moved to Texas because the children had resided with their mother, who was "a person acting as a parent," in Texas for over six consecutive months and neither the parents nor the children resided in Nevada.

Saavedra v. Schmidt, 96 S.W.3d 533 (Tex. App.—Austin 2002, no pet.). Pursuant to the UCCJEA, California, which was the home state of the children and where the ex-husband continued to reside, retained exclusive continuing jurisdiction over child custody matters and was the only state that could determine whether it would continue to exercise that jurisdiction. Absent the California court's relinquishment of that exclusive continuing jurisdiction, the courts in Texas, where the children and ex-wife now resided, were without jurisdiction to modify the California court's custody determination.

McGuire v. McGuire, 18 S.W.3d 801 (Tex. App.—El Paso 2000, no pet.). A Texas trial court lacked subject matter jurisdiction to modify joint managing conservatorship of a child when the mother acknowledged that the father had filed a simultaneous proceeding in the child's new home state of Illinois before she filed her motion to modify in Texas, the Illinois court attempted without success to contact the Texas court concerning the child on several occasions, and only after receiving the news that the Texas court had signed an order modifying custody did the Illinois court decline to exercise jurisdiction. The court of appeals observed that the Illinois court declined to exercise jurisdiction not because Texas would be a more appropriate forum to determine custody but because the Texas court had issued a custody determination. The court of appeals would not sanction the "bootstrapping" of jurisdiction onto a trial court that failed in its duty to communicate with another state's court.

Allison v. Allison, 3 S.W.3d 211 (Tex. App.—Corpus Christi 1999, no pet.). An ex-husband's motion to modify visitation rights was not a dispute over "custody" under the UCCJA, the precursor to the UCCJEA. Thus, the child's establishment of residence in a new home state did not deprive Texas of jurisdiction over the matter. Texas and the new home state had concurrent jurisdiction because the Texas court signed the original divorce decree making the custody determination, the ex-husband remained a Texas resident, and the Texas court did not decline to exercise jurisdiction at any time.

RESOURCES

John J. Sampson & Harry L. Tindall, *The UCCJA Comes to Texas—As Amended, Integrated and Improved*, 46 Tex. B.J. 1096 (1983).

Steven M. Schuetze, *Thompson v. Thompson: The Jurisdictional Dilemma of Child Custody Cases Under the Parental Kidnapping Prevention Act*, 16 Pepp. L. Rev. 409 (1989).

Wayne Young, *Parental Child-Snatching: Out of a No-Man's-Land of Law*, 13 St. Mary's L.J. 337 (1981).

Sec. 152.204. TEMPORARY EMERGENCY JURISDICTION

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 152.201 through 152.203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 152.201 through 152.203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 152.201 through 152.203, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 152.201 through 152.203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 152.201 through 152.203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of a state having jurisdiction under Sections 152.201 through 152.203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 152.201 through 152.203, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 204. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re S.J., 522 S.W.3d 576 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding). One parent's removal of the child from the other parent without the other parent's knowledge or consent, standing alone, is insufficient to confer emergency jurisdiction as there must be some evidence that the removing parent abandoned, mistreated, or abused the child or threatened to do so.

In re Salminen, 492 S.W.3d 31 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding). Jurisdiction under section 152.204 is reserved for "extraordinary circumstance." "A Texas trial court does not have jurisdiction to enter a temporary order on emergency grounds . . . where no evidence indicates that the child needs emergency protection."

In re Marriage of Lai, 333 S.W.3d 645 (Tex. App.—Dallas 2009, no pet.). The exercise of temporary emergency jurisdiction is reserved for extraordinary circumstances. A trial court has temporary emergency jurisdiction in a child custody matter if the children are present in the state and the children have been abandoned or it is necessary in an emergency to protect the children because the children are subjected to or threatened with mistreatment or abuse.

In re J.C.B., 209 S.W.3d 821 (Tex. App.—Amarillo 2006, no pet.). A trial court had temporary emergency jurisdiction over a child whose parents were arrested for drug possession while driving through Texas. The trial court also had jurisdiction to terminate the father's parental rights because Texas became the child's home state when the trial court appointed TDFPS temporary managing conservator and the termination took place fourteen months later.

In re M.G.M., 163 S.W.3d 191 (Tex. App.—Beaumont 2005, no pet.). A trial court's temporary emergency protective order became a final and appealable order when it disposed of all parties and all issues over which the trial court had jurisdiction to rule.

Saavedra v. Schmidt, 96 S.W.3d 533 (Tex. App.—Austin 2002, no pet.). A court's exercise of temporary emergency jurisdiction under the UCCJEA is temporary in nature and may not be used as a vehicle to attain modification jurisdiction for an ongoing, indefinite period of time. Temporary orders issued under a trial court's temporary emergency jurisdiction are not subject to appeal because they are not final orders.

Sec. 152.205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER

(a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of Section 152.108 must be given to all persons entitled to

notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 205. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

Velasco v. Ayala, 312 S.W.3d 783 (Tex. App.—Houston [1st Dist.] 2009, no pet.). State procedural law and constitutional due process require that a defendant be served, waive service, or voluntarily appear before judgment may be rendered.

Wright v. Wentzel, 749 S.W.2d 228 (Tex. App.—Houston [1st Dist.] 1988, no writ). An ex-wife was given notice and an opportunity to be heard on her ex-husband's motion to modify conservatorship when the ex-husband served her with process by personal delivery out of state but she never did file an answer.

Soto-Ruphuy v. Yates, 687 S.W.2d 19 (Tex. App.—San Antonio 1984, orig. proceeding) (per curiam). Service of notice which was provided by certified mail to the Texas attorney of a mother who lived in California only six days before a hearing on an application for emergency temporary orders to restrain the mother from removing the child from the jurisdiction of the court and to exclude her from possession of and access to the child did not satisfy the requirement under this section of a reasonable notice and opportunity to be heard or allow for filing of an answer before the hearing.

Sec. 152.206. SIMULTANEOUS PROCEEDINGS

(a) Except as otherwise provided in Section 152.204, a court of this state may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 152.207.

(b) Except as otherwise provided in Section 152.204, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 152.209. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 206. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re Marriage of Marsalis, 338 S.W.3d 131 (Tex. App.—Texarkana 2011, no pet.). A Texas trial court properly exercised jurisdiction under subsection 152.201(a)(4)'s default provision when at the time the husband filed for divorce, no other state had jurisdiction under the "home state," "significant connection," or "more appropriate forum" provisions of the UCCJEA so that a later-filed lawsuit in Louisiana could not vest a Louisiana court with jurisdiction over the case.

Waltenburg v. Waltenburg, 270 S.W.3d 308 (Tex. App.—Dallas 2008, no pet.). To the extent that an Arizona divorce decree adjudicated custody of the parties' child, the Arizona proceeding did not arise out of a simultaneous proceeding within the meaning of this section when the husband filed it before the child's birth because the UCCJEA does not apply to unborn children.

In re Brown, 203 S.W.3d 888 (Tex. App.—Fort Worth 2006, orig. proceeding). Missouri was a child's home state under the UCCJEA during the six months before the mother's commencement of divorce and custody proceedings in Missouri because the child lived with his mother in Missouri, his grandmother cared for him there while his mother worked in another state, his father visited him in Missouri, and he was enrolled in preschool in Missouri.

In re Brilliant, 86 S.W.3d 680 (Tex. App.—El Paso 2002, no pet.). When neither Massachusetts nor Texas was a child's home state and a Texas court acquired jurisdiction based on significant connections, subsection 152.206(b) did not require the Texas court to stay proceedings and communicate with the Massachusetts court.

In re E.K.N., 24 S.W.3d 586 (Tex. App.—Fort Worth 2000, no pet.). This section required a Texas court to stay proceedings in favor of a California court when the California court was exercising jurisdiction substantially in conformity with the Family Code's version of the UCCJA, the precursor to the UCCJEA, and the California court had refused to abate the proceedings.

Koester v. Montgomery, 886 S.W.2d 432 (Tex. App.—Houston [14th Dist.] 1994, orig. proceeding). A Texas trial court did not abuse its discretion when exercising jurisdiction in a child custody case, even though a prior proceeding was pending in Venezuela, because the trial court could have concluded that Venezuela was not exercising jurisdiction substantially in conformity with the UCCJA, the precursor to the UCCJEA, when the Venezuelan court had not afforded the mother with reasonable notice and an opportunity to be heard prior to signing an ex parte temporary custody order, neither Texas nor Venezuela was the child's home state, and the evidence was conflicting as to whether Texas or Venezuela had more significant contacts with the child.

Garza v. Harney, 726 S.W.2d 198 (Tex. App.—Amarillo 1987, orig. proceeding). A Texas trial court had jurisdiction to sign a temporary, short-term order, on emergency grounds, for the protection of the parties' daughter, who was the subject of a pending custody determination in Mexican divorce proceedings, permitting the daughter to remain in the United States but substantially limiting the father's access to the daughter until proper steps could be taken in the Mexican court to protect the daughter.

Sec. 152.207. INCONVENIENT FORUM

(a) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside this state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, the court shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 207. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re K.T.P., No. 05-17-0922-CV, 2018 WL 6716934 (Tex. App.—Dallas Dec. 21, 2018, no pet.) (mem. op.). Trial courts may make forum determinations under the UCCJEA based on "submitted information," and it is not necessary for the trial court to conduct an evidentiary hearing under section 152.207.

In re W.T.H., No. 04-16-00055-CV, 2017 WL 603649 (Tex. App.—San Antonio Feb. 15, 2017, no pet.) (mem. op.). Wisconsin had continuing, exclusive jurisdiction; therefore only Wisconsin, not Texas, had authority to determine if Wisconsin was an inconvenient forum and, if so, to defer to Texas. Texas court had no say in whether Wisconsin was an inconvenient forum.

In re Green, 352 S.W.3d 772 (Tex. App.—San Antonio 2011, orig. proceeding). Mandamus would not lie in divorce proceedings based on a husband's assertion that Texas was an inconvenient forum when there was no indication in the record that the husband ever presented that argument to the trial court and obtained a ruling on it.

In re Marriage of Marsalis, 338 S.W.3d 131 (Tex. App.—Texarkana 2011, no pet.). Texas, which was not the children's home state, could not assert original jurisdiction over a child custody proceeding under the "significant connection" provision of the UCCJEA when the children lived in Texas for about four months before the husband's filing of a divorce action, the husband and several coworkers stayed at the husband's house in Texas during their "week on, week off" work schedule, and there was no evidence that the children's relationship with the husband's parents, who lived in Texas, had a great impact on the children.

Waltenburg v. Waltenburg, 270 S.W.3d 308 (Tex. App.—Dallas 2008, no pet.). A court of appeals will not imply findings under this section when the trial court granted only a party's plea in abatement and did not rule on a special appearance that requested, in the alternative, that the trial court decline jurisdiction under this section.

Hart v. Kozik, 242 S.W.3d 102 (Tex. App.—Eastland 2007, no pet.). A Texas court did not abuse its discretion by declining to exercise jurisdiction when the children and their mother had moved to Alabama. The court of appeals rejected the father's claims that this section requires a trial court to (1) take the children's best interest into account when determining jurisdiction; (2) consider how the other state's evidentiary rules would allow a trial court there to take the children's wishes into consideration when making custody determinations; (3) view the mother's failure to contest jurisdiction in a prior Texas proceeding as a "jurisdictional agreement" under subsection 157.207(b)(5); (4) make findings of fact on each of subsection 152.207(b)'s factors, even those on which neither party presented evidence; and (5) stay the proceedings pending the filing of a suit in Alabama when the father sought modification of the prior order but failed to file suit in Alabama.

Monk v. Pomberg, 263 S.W.3d 199 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Although a mother failed to comply with the procedural requirements of subsection 152.207(a) when she raised the issue of inconvenient forum by seeking a declaratory judgment instead of filing a motion, the trial court had jurisdiction to declare Texas an inconvenient forum to consider the mother's petition to terminate the father's parental rights, the evidence showing that mother and child had lived in Iowa for over five years and that the child had extensive family connections in Iowa, attended school there, participated in extracurricular activities, and received psychiatric therapy in Iowa.

In re Poole, 975 S.W.2d 342 (Tex. App.—Amarillo 1998, no pet.). A trial court erred by attempting both to modify an original divorce decree and to decline to exercise certain portions of its jurisdiction. The Family Code mandates that any decision to decline jurisdiction be made before signing an initial or modification decree. The trial court's findings as part of its judgment that it did not retain jurisdiction to modify managing conservatorship of the child violated the prohibition on advisory opinions because those findings did not settle a present controversy between the parties but attempted to determine that the trial court would not have jurisdiction in some future dispute that might or might not occur.

Coots v. Leonard, 959 S.W.2d 299 (Tex. App.—El Paso 1997, no pet.). This section of the UCCJA, the precursor to the UCCJEA, allowing transfer to a more convenient forum, applied to visitation disputes.

White v. Blake, 859 S.W.2d 551 (Tex. App.—Tyler 1993, orig. proceeding). Under the UCCJA, the precursor to the UCCJEA, and the PKPA, a Texas trial court had no authority to assume jurisdiction over a proceeding to terminate a nonresident father's parental rights because a custody proceeding involving the same child was pending in Alabama and there had been no inquiry into or resolution of the question whether the Alabama court had relinquished jurisdiction.

Abderholden v. Morizot, 856 S.W.2d 829 (Tex. App.—Austin 1993, no writ) (per curiam). The courts of Arkansas, as home state, did not decline to exercise jurisdiction and thereby confer jurisdiction on Texas courts under the Texas and Arkansas versions of the UCCJA, the precursor to the UCCJEA, when the record on appeal did not contain findings or an order from the Arkansas court, there was no evidence that the Arkansas court held a hearing on the question of jurisdiction, and, at best, the record indicated an agreement between judges, which was insufficient to provide a Texas court with jurisdiction.

Sec. 152.208. JURISDICTION DECLINED BY REASON OF CONDUCT

(a) Except as otherwise provided in Section 152.204 or other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under Sections 152.201 through 152.203 determines that this state is a more appropriate forum under Section 152.207; or

(3) no court of any other state would have jurisdiction under the criteria specified in Sections 152.201 through 152.203.

(b) If a court of this state declines to exercise its jurisdiction pursuant to Subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 152.201 through 152.203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to Subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 208. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re A.J., No. 02-15-00329-CV, 2016 WL 7010925 (Tex. App.—Fort Worth Dec. 1, 2016, no pet.) (mem. op.). The "unjustifiable conduct" contemplated in section 152.208 is directed to the party who is seeking to invoke the Texas court's jurisdiction, not to the party seeking to avoid it. Further, this section directs what a Texas court should do when such conduct exists, not what action a court in another state should take.

In re Marriage of Marsalis, 338 S.W.3d 131 (Tex. App.—Texarkana 2011, no pet.). Texas, which was not the children's home state, could not assert original jurisdiction over a child custody proceeding under the "significant connection" provision of the UCCJEA when the children lived in Texas for about four months prior to the husband's filing of a divorce action, the husband and several coworkers stayed at the husband's house in Texas during their "week on, week off" work schedule, and there was no evidence that the children's relationship with the husband's parents, who lived in Texas, had a great impact on the children.

In re Marriage of Lai, 333 S.W.3d 645 (Tex. App.—Dallas 2009, no pet.). A trial court properly dismissed a divorce action, when neither the husband nor the wife met the residency or domiciliary requirements for filing a divorce petition, because engaging in unjustifiable conduct under this section served as an independent basis for dismissal and the husband failed to challenge the independent ground on appeal.

In re Burk, 252 S.W.3d 736 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). Although Texas was a child's home state under the UCCJEA, a Texas court was not required to exercise its jurisdiction to make an initial child custody determination. The Texas court could defer jurisdiction if it determined that Texas was an inconvenient forum.

In re Lewin, 149 S.W.3d 727, 740 (Tex. App.—Austin 2004, orig. proceeding). If a court finds that is has acquired jurisdiction under the UCCJEA because a party has engaged in unjustifiable conduct, it is mandatory under section 152.208 that the court decline to exercise that jurisdiction.

In re Carpenter, 835 S.W.2d 760 (Tex. App.—Amarillo 1992, no writ). The UCCJA, the precursor to the UCCJEA, did not permit a Texas court to exercise jurisdiction over a child custody case, on the ground that Texas was the state to which the child and his family had the closest connection, when the father had improperly removed the child from the mother's physical custody and brought him to Texas. Further, a trial court is not required to find and designate a more appropriate forum for a child custody dispute after declining to exercise jurisdiction over that dispute based on a father's wrongful taking of a child from his mother's custody.

Sec. 152.209. INFORMATION TO BE SUBMITTED TO COURT

(a) Except as provided by Subsection (e) or unless each party resides in this state, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by Subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in Subsections (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1036, Sec. 4, eff. Sept. 1, 2003.

COMMENTS

This section is similar to UCCJEA § 209. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re M.S.C., No. 05-14-01581-CV, 2016 WL 929218 (Tex. App.—Dallas Mar. 11, 2016, no pet.) (mem. op.). The requirements of section 152.209 are not jurisdictional; thus, it is discretionary with the trial court whether to delay the proceedings until the required information is provided.

In re J.C.M., No. 09-13-00349-CV, 2014 WL 2152100 (Tex. App.—Beaumont May 22, 2014, no pet.) (mem. op.). Failure to comply with section 152.209 is not jurisdictional, and a petitioner is only required to provide information that is reasonably ascertainable.

Lemley v. Miller, 932 S.W.2d 284 (Tex. App.—Austin 1996, no writ) (per curiam). A special appearance challenging jurisdiction in a child custody modification suit was properly verified, even though the challenger did not file a personal affidavit, when the challenger's attorney filed an affidavit containing the information required to be submitted under oath and the testimony and stipulations at the special appearance hearing established the required information.

Creavin v. Moloney, 773 S.W.2d 698 (Tex. App.—Corpus Christi 1989, writ denied). Although a trial court, in a custody case between divorced parents, has authority to dismiss a suit for failure to timely file a proper affidavit under this section, it may not dismiss the suit for lack of jurisdiction on that basis.

Sec. 152.210. APPEARANCE OF PARTIES AND CHILD

(a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 152.108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under Subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 210. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

SUBCHAPTER D. ENFORCEMENT

Sec. 152.301. DEFINITIONS

In this subchapter:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 301. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.302. ENFORCEMENT UNDER HAGUE CONVENTION

Under this subchapter a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 302. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re Lewin, 149 S.W.3d 727 (Tex. App.—Austin 2004, orig. proceeding). A trial court abused its discretion by signing temporary orders in a father's SAPCR instead of immediately enforcing a Canadian order, issued under the Hague Convention, that the father return the child to its mother. The Hague Convention prohibits a trial court from considering the merits of a custody modification motion before enforcing a Hague Convention order.

In re K.L.V., 109 S.W.3d 61 (Tex. App.—Fort Worth 2003, pet. denied). Once a Texas court adopted a Nevada order granting a wife temporary custody of the parties' children, the order became a final, appealable order under this section of the UCCJEA, which provides that an appeal may be taken from a final order in a proceeding under this subchapter in accordance with expedited appellate procedures as in other civil cases.

Sec. 152.303. DUTY TO ENFORCE

(a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 303. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

Berwick v. Wagner, 336 S.W.3d 805 (Tex. App.—Houston [1st Dist.] 2011, pet. denied). A California judgment that established the nonbiological father of a child as a parent and the child's surrogate mother and her husband as nonparents was an enforceable child custody determination under the UCCJEA. The UCCJEA required Texas to recognize and register the child custody determination in the nonbiological father's action to establish his parent-child relationship with the child after the nonbiological father's same-sex relationship with the biological father of the child ended, even though custody was not disputed between the biological and nonbiological fathers in the California proceeding. The California court allocated parentage and, by necessary implication, custody between presumptive parents whose rights were terminated and the intended parents whom that court declared legal parents.

In re S.J.O.B.G., 292 S.W.3d 764 (Tex. App.—Beaumont 2009, no pet.). A Norwegian municipality, appealing the denial of a petition seeking the return of a child to Norway after the mother moved to the United States with the child, failed to preserve for review the issue whether the trial court erred in failing to enforce Norwegian child custody orders pursuant to the UCCJEA when the municipality sought the child's return under the Hague Convention and ICARA but failed to seek or pursue a ruling regarding enforcement of the foreign custody determination in the trial court.

Saavedra v. Schmidt, 96 S.W.3d 533 (Tex. App.—Austin 2002, no pet.). Unless an ex-wife, who moved with the children from California to Texas, could establish that a California child custody order had been stayed or vacated, the Texas court was required to enforce it pursuant to the UCCJEA.

Sec. 152.304. TEMPORARY VISITATION

(a) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(1) a visitation schedule made by a court of another state; or

(2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under Subsection (a)(2), the court shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Subchapter C. The order remains in effect until an order is obtained from the other court or the period expires.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 304. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.305. REGISTRATION OF CHILD CUSTODY DETERMINATION

(a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in Section 152.209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by Subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to Subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by Subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under Subchapter C;

(2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Subchapter C; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 152.108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 305. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

Razo v. Vargas, 355 S.W.3d 866 (Tex. App.—Houston [1st Dist.] 2011, no pet.). A trial court should have held an evidentiary hearing to establish whether a mother received notice of a Mexican custody hearing before confirming a Mexican decree of custody under this section when the Mexican court allowed notice by publication but the mother sought to present evidence that the father did not attempt another method of service before resorting to publication.

Berwick v. Wagner, 336 S.W.3d 805 (Tex. App.—Houston [1st Dist.] 2011, pet. denied). California order approving parentage of child and addressing rights as between same-sex couple was considered a "custody determination" for purposes of registration under section 152.305.

Garza v. Harney, 726 S.W.2d 198 (Tex. App.—Amarillo 1987, orig. proceeding). A Texas trial court was empowered to sign a temporary, short-term order, on emergency grounds, for the protection of the parties' daughter, who was subject of a pending custody determination in Mexican divorce proceedings, permitting the daughter to remain in the United States but substantially limiting the father's access to the daughter until proper steps could be taken in the Mexican court to protect the daughter.

Sec. 152.306. ENFORCEMENT OF REGISTERED DETERMINATION

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Subchapter C, a registered child custody determination of a court of another state.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 306. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

Saavedra v. Schmidt, 96 S.W.3d 533 (Tex. App.—Austin 2002, no pet.). Unless an ex-wife, who moved with the children from California to Texas, could establish that a California child custody order had been stayed or vacated, the Texas court was required to enforce it pursuant to the UCCJEA.

Sec. 152.307. SIMULTANEOUS PROCEEDINGS

If a proceeding for enforcement under this subchapter is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Subchapter C, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 307. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.308. EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION

(a) A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child custody determination has been registered and confirmed under Section 152.305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order

unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under Subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will award the petitioner immediate physical custody of the child and order the payment of fees, costs, and expenses under Section 152.312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child custody determination has not been registered and confirmed under Section 152.305 and that:

(A) the issuing court did not have jurisdiction under Subchapter C;

(B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Subchapter C; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 152.108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under Section 152.305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subchapter C.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 308. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

Livanos v. Livanos, 333 S.W.3d 868 (Tex. App.—Houston [1st Dist.] 2010, no pet.). Notice of proceedings under the Hague Convention must be given in accordance with Texas statutes governing notice of interstate custody proceedings, which contemplate notice in accordance with the UCCJEA. Neither the Hague Convention nor the ICARA, with their focus on expediting proceedings, abdicate the requirements for strict compliance with notice, and thus a default judgment taken before the return of service was on file the required ten days was void.

Sec. 152.309. SERVICE OF PETITION AND ORDER

Except as otherwise provided in Section 152.311, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 309. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.310. HEARING AND ORDER

(a) Unless the court issues a temporary emergency order pursuant to Section 152.204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child custody determination has not been registered and confirmed under Section 152.305 and that:

(A) the issuing court did not have jurisdiction under Subchapter C;

(B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subchapter C; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 152.108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under Section 152.305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subchapter C.

(b) The court shall award the fees, costs, and expenses authorized under Section 152.312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 310. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD

(a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 152.308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately;

(3) state the date for the hearing on the petition; and

(4) provide for the safe interim placement of the child pending further order of the court and impose conditions on placement of the child to ensure the appearance of the child and the child's custodian.

(d) If the petition seeks to enforce a child custody determination made in a foreign country or an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction, the court may place a child with a parent or family member in accordance with Subsection (c)(4) only if the parent or family member has significant ties to the jurisdiction of the court. If a parent or family member of the child does not have significant ties to the jurisdiction of the court, the court shall provide for the delivery of the child to the Department of Family and Protective Services in the manner provided for the delivery of a missing child by Section 262.007(c).

(e) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(f) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 92, Sec. 4, eff. September 1, 2011.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 92 (S.B. 1490), Sec. 2, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 92 (S.B. 1490), Sec. 4, eff. September 1, 2011.

COMMENTS

This section is similar to UCCJEA § 311. See 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re Aubin, 29 S.W.3d 199 (Tex. App.—Beaumont 2000, orig. proceeding). While a warrant to take physical possession of a child under section 152.311 is enforceable throughout the state, a Texas trial court has no jurisdiction to order law enforcement officials outside of Texas to seize a child.

Sec. 152.312. COSTS, FEES, AND EXPENSES

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 312. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re J.J.L.–P., 256 S.W.3d 363 (Tex. App.—San Antonio 2008, no pet.). A trial court's error in awarding attorney's fees to a father seeking return of his child under the Hague Convention pursuant to the Family Code provision applica-

ble to final custody determinations did not require reversal because the trial court also concluded that the ICARA mandated an award of attorney's fees to a successful petitioner under the Hague Convention.

Sec. 152.313. RECOGNITION AND ENFORCEMENT

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Subchapter C.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 313. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

Rush v. Stansbury, 668 S.W.2d 690 (Tex. 1984, orig. proceeding). When the parties' children had been away from Tennessee less than six months at the time a divorced mother filed her suit there to change custody, the Tennessee court had jurisdiction to render an order transferring custody of the children to their mother. The PKPA obligated a Texas court, which erred in subsequently naming the father temporary managing conservator of the children, to give full faith and credit to the Tennessee order.

Welborn-Hosler v. Hosler, 870 S.W.2d 323 (Tex. App.—Houston [14th Dist.] 1994, no writ). Texas was not required to give full faith and credit to a North Carolina order modifying the child visitation provisions of a Texas divorce decree because the North Carolina court did not assume jurisdiction in accordance with the UCCJA, the precursor to the UCCJEA, or the PKPA. Texas had continuing jurisdiction under the PKPA and had not declined to exercise jurisdiction.

Lundell v. Clawson, 697 S.W.2d 836 (Tex. App.—Austin 1985, orig. proceeding). A Minnesota father was entitled to immediate and automatic habeas corpus relief in Texas based on Minnesota decrees that vested him with the legal right to possession of his child.

Gunter v. Glasgow, 608 S.W.2d 273 (Tex. Civ. App.—Eastland 1980, no writ). A trial court did not err in not giving full faith and credit to a Kansas court's final judgment awarding custody of a child to a mother, when the mother did not name the child's aunt, with whom the child was living in Texas and whom the Texas court already had appointed as temporary managing conservator of the child, as a party in her Kansas pleadings and, but for the mother's request for a continuance, a jury trial in Texas would have been held before entry of the Kansas custody order.

Sec. 152.314. ACCELERATED APPEALS

An appeal may be taken from a final order in a proceeding under this subchapter in accordance with accelerated appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 152.204, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 8, eff. Sept. 1, 2017.

COMMENTS

This section is similar to UCCJEA § 314. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

ANNOTATIONS

In re J.P.L., 359 S.W.3d 695 (Tex. App.—San Antonio 2011, orig. proceeding). A trial court order granting a mother's petition to enforce a child custody determination pursuant to the Hague Convention and ICARA was not a "final" order for purposes of appeal because the trial court later abated implementation of the order to allow the trial court to hold a

contested hearing to reconsider the merits of the mother's petition. However, both the abatement and the trial court's denial of the father's special appearance were reviewable by mandamus.

In re K.L.V., 109 S.W.3d 61 (Tex. App.—Fort Worth 2003, pet. denied). Appeals from final orders issued under subchapter D of the UCCJEA are accelerated appeals and must be filed within twenty days of the date they were signed, and the filing of a motion for new trial or like motion does not extend the appellate deadline as it would in an ordinary appeal.

Sec. 152.315. Role of Prosecutor or Public Official

(a) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resorting to a proceeding under this subchapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

(1) an existing child custody determination;

(2) a request to do so from a court in a pending child custody proceeding;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 315. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.316. Role of Law Enforcement

At the request of a prosecutor or other appropriate public official acting under Section 152.315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under Section 152.315.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 316. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

Sec. 152.317. Costs and Expenses

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under Section 152.315 or 152.316.

Added by Acts 1999, 76th Leg., ch. 34, Sec. 1, eff. Sept. 1, 1999.

COMMENTS

This section is similar to UCCJEA § 314. *See* 9 Uniform Laws Annotated, Master Edition pt. I.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 153.001. PUBLIC POLICY

(a) The public policy of this state is to:

(1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;

(2) provide a safe, stable, and nonviolent environment for the child; and

(3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

(b) A court may not render an order that conditions the right of a conservator to possession of or access to a child on the payment of child support.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 25, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 787, Sec. 2, eff. Sept. 1, 1999.

ANNOTATIONS

In re M.J., 227 S.W.3d 786 (Tex. App.—Dallas 2006, pet. denied). Naming the mother sole managing conservator was in the children's best interest because the father, who was sole managing conservator under the divorce decree, moved the children to Bangladesh in violation of the decree and refused or restricted the mother's access to the children. Further, remaining in Bangladesh could have endangered the children's health or significantly impaired their social development, and the father spent an extensive amount of time in the United States such that requiring him to return the children to the United States would not prevent him from continuing his relationship with them.

In re E.S.S., 131 S.W.3d 632 (Tex. App.—Fort Worth 2004, no pet.). An agreement by which a father relinquished his parental rights to his child in exchange for his mother and brother being named possessory conservators with visitation rights was unenforceable and violated public policy because there was no evidence that termination was in the best interest of the child or that any statutory grounds for termination were met.

In re C.R.O., 96 S.W.3d 442 (Tex. App.—Amarillo 2002, pet. denied). When conducting an evidentiary review in a relocation case, a court of appeals must endeavor to give meaning to the public policy imperatives of subsection 153.001(a), keeping in mind that the primary consideration is the best interest of the children.

In re A.N.H., 70 S.W.3d 918 (Tex. App.—Amarillo 2002, no pet.). A trial court order that relieved a father of his child support obligation until such time as the child resumed visitation with the father was void as against public policy because, under the Family Code, the right to possession of or access to a child may not be conditioned on the payment of child support.

Sec. 153.002. BEST INTEREST OF CHILD

The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Troxel v. Granville, 530 U.S. 57, 68 (2000). This case sets out the initial premise that there is a presumption that fit parents act in the best interests of their children.

In re Lee, 411 S.W.3d 445 (Tex. 2013, orig. proceeding). Under subsection 153.0071(e), a party to an MSA is entitled to judgment on the MSA unless there is a finding of family violence under subsection 153.0071(e–1). The "best interest" requirement of section 153.002 does not apply to MSAs absent a finding of family violence.

Holley v. Adams, 544 S.W.2d 367, 371–72 (Tex. 1976). "An extended number of factors have been considered by the courts in ascertaining the best interest of the child. Included among these are the following: (A) the desires of the child; (B) the emotional and physical needs of the child now and in the future; (C) the emotional and physical danger to the child now and in the future; (D) the parental abilities of the individuals seeking custody; (E) the programs available to assist these individuals to promote the best interest of the child; (F) the plans for the child by these individuals or by the agency seeking custody; (G) the stability of the home or proposed placement; (H) the acts or omissions of the parent which may indicate that the existing parent–child relationship is not a proper one; and (I) any excuse for the acts or omissions of the parent. This listing is by no means exhaustive, but does indicate a number of considerations which either have been or would appear to be pertinent."

In re F.E.N., 542 S.W.3d 752 (Tex. App.—Houston [14th Dist.] 2018, no pet.). A best-interest determination should not be solely based on evidence that a child may be better off living elsewhere.

In re Rodriguez, 940 S.W.2d 265 (Tex. App.—San Antonio 1997, writ denied). When determining issues of conservatorship and possession of and access to a child, the best interest of the child shall always be the court's primary consideration. The affections and feelings of parents, including biological fathers, are secondary.

In re T.D.C., 91 S.W.3d 865 (Tex. App.—Fort Worth 2002, pet. denied). The best interest of the child shall always be the primary consideration of the court in a proceeding to change managing conservators.

In re J.E.P., 49 S.W.3d 380 (Tex. App.—Fort Worth 2000, no pet.). A trial court has wide latitude in determining the best interest of a minor child in proceedings regarding conservatorship, possession, and access, and its judgment will not be disturbed on appeal unless the record as a whole shows that the trial court abused its discretion.

In re M.R., 975 S.W.2d 51 (Tex. App.—San Antonio 1998, pet. denied). An abuse of discretion occurs in a custody modification proceeding when the trial court's actions are arbitrary and unreasonable and without reference to any guiding rules or principles of law.

Villasenor v. Villasenor, 911 S.W.2d 411 (Tex. App.—San Antonio 1995, no writ). A trial court has wide discretion in determining the best interest of a child in a custody case, but it abuses that discretion if it acts arbitrarily or unreasonably.

Sec. 153.003. No Discrimination Based on Sex or Marital Status

The court shall consider the qualifications of the parties without regard to their marital status or to the sex of the party or the child in determining:

(1) which party to appoint as sole managing conservator;

(2) whether to appoint a party as joint managing conservator; and

(3) the terms and conditions of conservatorship and possession of and access to the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Fettig v. Fettig, 619 S.W.2d 262 (Tex. App.—Tyler 1981, no writ). The purpose of this section is to put both parents on an equal plane in a child custody case and thus to remove a preference for the mother.

Sec. 153.004. History of Domestic Violence or Sexual Abuse

(a) In determining whether to appoint a party as a sole or joint managing conservator, the court shall consider evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit.

(b) The court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child, including a sexual assault in violation of Section 22.011 or 22.021, Penal Code, that results in the other parent becoming pregnant with the child. A history of sexual abuse includes a sexual assault that results in the other parent becoming pregnant with the child, regardless of the prior relationship of the parents. It is a rebuttable presumption that the appointment of a parent as the sole managing conservator of a child or as the conservator who has the exclusive right to determine the primary residence of a child is not in the best interest of the child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

(c) The court shall consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator.

(d) The court may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that:

(1) there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit; or

(2) the parent engaged in conduct that constitutes an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code, and that as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child.

(d–1) Notwithstanding Subsection (d), the court may allow a parent to have access to a child if the court:

(1) finds that awarding the parent access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child; and

(2) renders a possession order that is designed to protect the safety and well-being of the child and any other person who has been a victim of family violence committed by the parent and that may include a requirement that:

(A) the periods of access be continuously supervised by an entity or person chosen by the court;

(B) the exchange of possession of the child occur in a protective setting;

(C) the parent abstain from the consumption of alcohol or a controlled substance, as defined by Chapter 481, Health and Safety Code, within 12 hours prior to or during the period of access to the child; or

(D) the parent attend and complete a battering intervention and prevention program as provided by Article 42.141, Code of Criminal Procedure, or, if such a program is not available, complete a course of treatment under Section 153.010.

(e) It is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or abuse or family violence by:

(1) that parent; or

(2) any person who resides in that parent's household or who is permitted by that parent to have unsupervised access to the child during that parent's periods of possession of or access to the child.

(f) In determining under this section whether there is credible evidence of a history or pattern of past or present child neglect or abuse or family violence by a parent or other person, as applicable, the court shall consider whether a protective order was rendered under Chapter 85, Title 4, against the parent or other person during the two-year period preceding the filing of the suit or during the pendency of the suit.

(g) In this section:

(1) "Abuse" and "neglect" have the meanings assigned by Section 261.001.

(2) "Family violence" has the meaning assigned by Section 71.004.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 774, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 787, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 586, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 642, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 907 (H.B. 1228), Sec. 1, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 907 (H.B. 1228), Sec. 2, eff. September 1, 2013. Amended by Acts 2017, 85th Leg., R.S., Ch. 99 (S.B. 495), Sec. 1, eff. Sept. 1, 2017.

ANNOTATIONS

In re H.P.J., No. 14-17-00715-CV, 2019 WL 1119612 (Tex. App.—Houston [14th Dist.] Mar. 12, 2019, no pet.) (mem. op.). If the trial court does not find "credible evidence" of a history of abuse, subsection 153.004(b) does not prohibit the court from appointing joint managing conservators.

In re V.S., No. 02-18-00195-CV, 2018 WL 6219441 (Tex. App.—Fort Worth Nov. 29, 2018, no pet.) (mem. op.). A single act of violence or abuse may constitute a history of physical abuse for the purposes of section 153.004.

Baker v. Baker, 469 S.W.3d 269 (Tex. App.—Houston [14th Dist.] 2015, no pet.). The trial court abused its discretion when it appointed the father as a joint managing conservator of the parties' children. By making an express finding of family violence, the trial court determined that evidence of physical abuse was credible in this case.

In re S.E.K., 294 S.W.3d 926 (Tex. App.—Dallas 2009, pet. denied). The presumption against the appointment of a parent as the sole managing conservator of a child when credible evidence shows a history of sexual abuse of the child by that parent does not apply in a proceeding to modify child custody.

Alexander v. Rogers, 247 S.W.3d 757 (Tex. App.—Dallas 2008, no pet.). One incident of physical violence can constitute a history of physical abuse so as to trigger application of this section.

Stallworth v. Stallworth, 201 S.W.3d 338 (Tex. App.—Dallas 2006, no pet.). A trial court did not abuse its discretion when it appointed the parents joint managing conservators, even though the wife alleged that the husband had committed family violence against her, because there was conflicting testimony over the alleged incident, nothing in the record showed any undisputed evidence of family violence on the part of either party, and nothing indicated that the trial court did not take the parties' testimony into account when making its decision on child custody.

In re R.T.H., 175 S.W.3d 519 (Tex. App.—Fort Worth 2005, no pet.). It was not in a child's best interest to modify an agreed order of parentage that appointed the parents joint managing conservators, with the mother having the exclusive right to determine the child's primary residence, when the mother had successfully completed deferred adjudication community supervision and attended and successfully completed batterer's intervention and parenting classes. In addition, the caseworker concluded that the child should continue to live with the mother, with the father having generous visitation, given that the child had lived with the mother since birth, had a brother in the mother's home, and the mother was more stable than she might have been in years, having a husband, a new baby and able to stay home with the children.

In re Marriage of Stein, 153 S.W.3d 485 (Tex. App.—Amarillo 2004, no pet.). Although a single act of violence or abuse may not constitute a "pattern," it can amount to a "history" of physical abuse within the meaning of this section.

In re M.R., 975 S.W.2d 51 (Tex. App.—San Antonio 1998, pet. denied). The application of this section is not limited to spousal abuse. This section requires a court to admit evidence of violence committed by one of the child's parents against the other even though parents were never married.

RESOURCES

Frederick S. Adams, Jr., & Hunter Lewis, *Civil and Criminal Ramifications of a Family Violence Protective Order*, Adv. Fam. L. (2010).

Lynn Bradshaw–Hull, *Protective Orders: The Nuts and Bolts*, So. Tex. Fam. L. Conf. (2011).

Sally Holt Emerson, *Protective Orders*, Adv. Fam. L. (2011).

Carlos Guillermo Salinas, *Protective Orders: Who Needs Them and How to Get Them*, U.T. Fam. L. Front Lines (2011).

Judy L. Warne, *The Effect of Intimate Partner Abuse on Children*, Adv. Fam. L. (2012).

Sec. 153.005. APPOINTMENT OF SOLE OR JOINT MANAGING CONSERVATOR

(a) In a suit, except as provided by Section 153.004, the court:

(1) may appoint a sole managing conservator or may appoint joint managing conservators; and

(2) if the parents are or will be separated, shall appoint at least one managing conservator.

(b) A managing conservator must be a parent, a competent adult, the Department of Family and Protective Services, or a licensed child-placing agency.

(c) In making an appointment authorized by this section, the court shall consider whether, preceding the filing of the suit or during the pendency of the suit:

(1) a party engaged in a history or pattern of family violence, as defined by Section 71.004;

(2) a party engaged in a history or pattern of child abuse or child neglect; or

(3) a final protective order was rendered against a party.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.043, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 117 (S.B. 817), Sec. 3, eff. September 1, 2015.

ANNOTATIONS

In re N.F.M., No. 05-15-01232-CV, 2016 WL 6835721 (Tex. App.—Dallas Nov. 3, 2016, no pet.) (mem. op.). The trial court is required to presume that the appointment of both parents as joint managing conservators is in the best interest of the child until evidence is presented to rebut this presumption.

Wimpey v. Wimpey, 662 S.W.2d 680 (Tex. App.—Dallas 1983, no writ). A grandparent may be a "suitable competent adult" within the meaning of this section.

In re H.D.O., 580 S.W.2d 421 (Tex. Civ. App.—Eastland 1979, no writ). Whom a trial court appoints as managing conservator of a minor child is within the sound discretion of the trial court.

King v. King, 544 S.W.2d 795 (Tex. Civ. App.—San Antonio 1976, no writ). A trial court did not abuse its discretion by refusing to appoint the child's mother, who was the sole known parent of the child, as managing conservator because the mother already held the rights and powers of a managing conservator with respect to the child.

Minjarez v. Minjarez, 495 S.W.2d 630 (Tex. Civ. App.—Amarillo 1973, no writ). When the evidence in a divorce case is conflicting, awarding custody of minor children is within the sound discretion of the trial court.

Ott v. Ott, 245 S.W.2d 982 (Tex. Civ. App.—Beaumont 1952, no writ). Whether a trial court should divide custody of a child, and if so, what provisions it should make, are only some of the matters a trial court considers to determine what judgment would be in a child's best interest. The facts of each particular case must necessarily determine the judgment to be rendered.

Sec. 153.006. APPOINTMENT OF POSSESSORY CONSERVATOR

(a) If a managing conservator is appointed, the court may appoint one or more possessory conservators.

(b) The court shall specify the rights and duties of a person appointed possessory conservator.

(c) The court shall specify and expressly state in the order the times and conditions for possession of or access to the child, unless a party shows good cause why specific orders would not be in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Blackwell v. Humble, 241 S.W.3d 707 (Tex. App.—Austin 2007, no pet.). A trial court did not abuse its discretion by modifying a divorce decree, which appointed the children's parents as joint managing conservators, by adding a grandmother as possessory conservator when the grandmother's appointment did not run afoul of the statutory presumption that it is in a child's best interest for the child's parents to be appointed joint managing conservators.

Sec. 153.007. AGREED PARENTING PLAN

(a) To promote the amicable settlement of disputes between the parties to a suit, the parties may enter into a written agreed parenting plan containing provisions for conservatorship and possession of the child and for modification of the parenting plan, including variations from the standard possession order.

(b) If the court finds that the agreed parenting plan is in the child's best interest, the court shall render an order in accordance with the parenting plan.

(c) Terms of the agreed parenting plan contained in the order or incorporated by reference regarding conservatorship or support of or access to a child in an order may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as a contract.

(d) If the court finds the agreed parenting plan is not in the child's best interest, the court may request the parties to submit a revised parenting plan. If the parties do not submit a revised parenting plan satisfactory to the court, the court may, after notice and hearing, order a parenting plan that the court finds to be in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 26, eff. Sept. 1, 1995. Amended by: Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 3, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 1, eff. September 1, 2007.

ANNOTATIONS

Allen v. Allen, 475 S.W.3d 453 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Parties to a divorce proceeding may enter a written agreement concerning conservatorship and possession of a child. However, when one party revokes consent before the trial court enters its final orders, the prior agreement on its own is no longer a proper basis for such orders. Even if the husband had not withdrawn his consent to the agreement, the trial court was not bound to follow the agreement unless it determined that it was in the children's best interest.

Kendrick v. Seibert, 439 S.W.3d 408 (Tex. App.—Houston [1st Dist.] 2014, no pet.). For matters concerning the parent-child relationship, terms of the agreement concerning conservatorship, access to the child, or child support are not enforceable as a contract. Any other terms concerning the parent-child relationship can be enforced as a contract.

Ex parte Gorena, 595 S.W.2d 841, 844 (Tex. 1979, orig. proceeding). Once an agreement of the parties on a parenting plan has been approved by the court and made part of the judgment, the agreement is no longer a contract between the parties but becomes the judgment of the court.

Beyers v. Roberts, 199 S.W.3d 354 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). Subsection 153.007(b) does not require a trial court to conduct an evidentiary hearing to determine whether an agreed parenting plan resulting from a mediated settlement is in the child's best interest, although a trial court may choose to do so in its discretion. Rather, this subsection outlines what a trial court must or may do upon making such a determination with respect to agreed parenting plans generally.

McLendon v. McLendon, 847 S.W.2d 601 (Tex. App.—Dallas 1992, writ denied). When a court reporter transcribes a dictated agreement on a parenting plan, including sworn testimony between two parties in open court, the parties' consent is memorialized, reduced to writing, and has the same effect as a written agreement signed by the parties.

RESOURCES

Margaret M. Menicucci & Suzanne Schwartz, *Negotiating in the Collaborative Zone*, Collaborative L. (2012).

Larry H. Schwartz, *Negotiation Techniques for Getting the Case Settled*, Marriage Dissolution (2010).

Sec. 153.0071. ALTERNATE DISPUTE RESOLUTION PROCEDURES

(a) On written agreement of the parties, the court may refer a suit affecting the parent-child relationship to arbitration. The agreement must state whether the arbitration is binding or non-binding.

(b) If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award unless the court determines at a non-jury hearing that the award is not in the best interest of the child. The burden of proof at a hearing under this subsection is on the party seeking to avoid rendition of an order based on the arbitrator's award.

(c) On the written agreement of the parties or on the court's own motion, the court may refer a suit affecting the parent-child relationship to mediation.

(d) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(e) If a mediated settlement agreement meets the requirements of Subsection (d), a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(e–1) Notwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds:

(1) that:

(A) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; or

(B) the agreement would permit a person who is subject to registration under Chapter 62, Code of Criminal Procedure, on the basis of an offense committed by the person when the person was 17 years of age or older or who otherwise has a history or pattern of past or present physical or sexual abuse directed against any person to:

(i) reside in the same household as the child; or

(ii) otherwise have unsupervised access to the child; and

(2) that the agreement is not in the child's best interest.

(f) A party may at any time prior to the final mediation order file a written objection to the referral of a suit affecting the parent-child relationship to mediation on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, the suit may not be referred to mediation unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation. This subsection does not apply to suits filed under Chapter 262.

(g) The provisions for confidentiality of alternative dispute resolution procedures under Chapter 154, Civil Practice and Remedies Code, apply equally to the work of a parenting coordinator, as defined by Section 153.601, and to the parties and any other person who participates in the parenting coordination. This subsection does not affect the duty of a person to report abuse or neglect under Section 261.101.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 27, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 937, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 178, Sec. 7, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1351, Sec. 2, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 7, eff. June 18, 2005. Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 2, eff. September 1, 2007. Amended by Acts 2017, 85th Leg., R.S., Ch. 99 (S.B. 495), Sec. 2, eff. Sept. 1, 2017.

COMMENTS

Subsections 153.0071(a) and (b) recognize the validity of arbitration in SAPCRs. Subsections 153.0071(c) through (e) adopt the rule that MSAs are binding and not subject to revocation. However, an MSA may be set aside by the court upon a finding that domestic violence impaired a party's ability to make decisions and that the agreement is not in the best interest of the child.

ANNOTATIONS

In re A.C., 560 S.W.3d 624 (Tex. 2018). A parent's voluntary and affirmative statements that termination of parental rights is in the child's best interest in an MSA binding on the parties under subsection 153.0071(d) can satisfy the requirement that a best-interest finding be supported by clear and convincing evidence.

In re Lee, 411 S.W.3d 445 (Tex. 2013, orig. proceeding). Under subsection 153.0071(e), a party to an MSA is entitled to judgment on the MSA unless there is a finding of family violence under subsection 153.0071(e–1). The "best interest" requirement of section 153.002 does not apply to MSAs absent a finding of family violence.

In re Minix, 543 S.W.3d 446 (Tex. App.—Houston [14th Dist.] 2018, orig. proceeding). Section 153.0071 does not allow the parties to agree to revoke an MSA that satisfies the requirements of section 153.0071(d), nor does it allow a judge to set aside an MSA in accordance with the parties' agreement.

In re M.W.M., Jr., 523 S.W.3d. 203 (Tex. App.—Dallas 2017, orig. proceeding). The Texas Family Code's arbitration provisions are augmented by and operate alongside the more general and vastly more detailed general arbitration regime in the Texas General Arbitration Act.

In re A.S., No. 05-16-01055-CV, 2017 WL 655952 (Tex. App.—Dallas Feb. 17, 2017, no pet.) (mem. op.). The family violence exception in subsection 153.0071(e–1) operates to vest the trial court with discretion to reject the terms of an MSA that are not in the best interests of the child when family violence is a circumstance that impaired the party's "ability to make decisions." The plain language of the statute does not require the trial court to find family violence caused the victim to enter into the MSA. In fact, the purpose of the exception is not to protect the victim of family violence but the child by providing a check on a statute that otherwise prohibits the court from considering the child's best interests.

Brooks v. Brooks, 257 S.W.3d 418 (Tex. App.—Fort Worth 2008, pet. denied). MSAs are binding in SAPCRs as well as in suits involving only marital property.

In re Circone, 122 S.W.3d 403 (Tex. App.—Texarkana 2003, no pet.). A mother was not entitled to withdraw consent to an MSA modifying possession of the children and directing her to pay child support because a trial court has no authority to go behind an MSA that meets the statutory requirements.

Stieren v. McBroom, 103 S.W.3d 602 (Tex. App.—San Antonio 2003, pet. denied). A trial court may vacate an arbitrator's award in a modification of child support proceeding under only two circumstances: (1) as allowed by the Family Code or (2) as allowed by the Texas Arbitration Act.

Spinks v. Spinks, 939 S.W.2d 229 (Tex. App.—Houston [1st Dist.] 1997, no writ). An MSA between parents that meets statutory requirements is binding on the parents and is not subject to revocation.

RESOURCES

Joan F. Jenkins & Eileen Gaffney, *The ADR Playing Field Today*, Marriage Dissolution (2011).

Heather L. King & Jessica Hall Janicek, *Attacking and Enforcing Mediated Settlement Agreements*, Marriage Dissolution (2012).

Jimmy Vaught, Leigh de la Reza & Lisa L. Stewart, *Round Up the Usual Suspects: Attacking and Defending Settlement Agreements, Informal Settlement Agreements, and Mediated Settlement Agreements*, Marriage Dissolution (2017).

Sec. 153.00715. DETERMINATION OF VALIDITY AND ENFORCEABILITY OF CONTRACT CONTAINING AGREEMENT TO ARBITRATE

(a) If a party to a suit affecting the parent-child relationship opposes an application to compel arbitration or makes an application to stay arbitration and asserts that the contract containing the agreement to arbitrate is not valid or enforceable, notwithstanding any provision of the contract to the contrary, the court shall try the issue promptly and may order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration.

(b) A determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law.

(c) This section does not apply to:

(1) a court order;

(2) an agreed parenting plan described by Section 153.007;

(3) a mediated settlement agreement described by Section 153.0071;

(4) a collaborative law agreement described by Section 153.0072; or

(5) any other agreement between the parties that is approved by a court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1088 (S.B. 1216), Sec. 2, eff. June 17, 2011.

Sec. 153.009. INTERVIEW OF CHILD IN CHAMBERS

(a) In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child, the court shall interview in chambers a child 12 years of age or older and may interview in chambers a child under 12 years of age to determine the child's wishes as to conservatorship or as to the person who shall have the exclusive right to determine the child's primary residence. The court may also interview a child in chambers on the court's own motion for a purpose specified by this subsection.

(b) In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child or on the court's own motion, the court may interview the child in chambers to determine the child's wishes as to possession, access, or any other issue in the suit affecting the parent-child relationship.

(c) Interviewing a child does not diminish the discretion of the court in determining the best interests of the child.

(d) In a jury trial, the court may not interview the child in chambers regarding an issue on which a party is entitled to a jury verdict.

(e) In any trial or hearing, the court may permit the attorney for a party, the amicus attorney, the guardian ad litem for the child, or the attorney ad litem for the child to be present at the interview.

(f) On the motion of a party, the amicus attorney, or the attorney ad litem for the child, or on the court's own motion, the court shall cause a record of the interview to be made when the child is 12 years of age or older. A record of the interview shall be part of the record in the case.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 781, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1289, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 9, eff. June 18, 2005.

ANNOTATIONS

Forbes v. Wettman, 598 S.W.2d 231 (Tex. 1980, orig. proceeding). A trial court has the authority to interview a child in a child custody suit.

Fettig v. Fettig, 619 S.W.2d 262 (Tex. App.—Tyler 1981, no writ). A trial court that interviews children in chambers has no duty to announce to counsel what the children disclosed or to give counsel a summary of any testimony the court considered important but not previously elicited.

RESOURCES

Wendy S. Burgower & Sara Springer Valentine, *When It's Right for the Child to Decide*, Marriage Dissolution (2010).

David Farr, Jonathan W. Gould & Lynn Kamin, *Interviewing Children: A Primer for Attorneys and Judges*, Adv. Fam. L. (2017).

Latrelle Bright Joy, *The Child's Voice in Court: In Camera Interviews and Child Hearsay*, Adv. Fam. L. (2010).

Sally L. Pretorius, *Kids Say the Darndest Things—An Academic and Demonstrative Look at the In Chambers Conference*, Adv. Fam. L. (2015).

Sec. 153.010. ORDER FOR FAMILY COUNSELING

(a) If the court finds at the time of a hearing that the parties have a history of conflict in resolving an issue of conservatorship or possession of or access to the child, the court may order a party to:

(1) participate in counseling with a mental health professional who:

(A) has a background in family therapy;

(B) has a mental health license that requires as a minimum a master's degree; and

(C) has training in domestic violence if the court determines that the training is relevant to the type of counseling needed; and

(2) pay the cost of counseling.

(b) If a person possessing the requirements of Subsection (a)(1) is not available in the county in which the court presides, the court may appoint a person the court believes is qualified to conduct the counseling ordered under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 645, Sec. 1, eff. Sept. 1, 1997.

Sec. 153.011. SECURITY BOND

If the court finds that a person who has a possessory interest in a child may violate the court order relating to the interest, the court may order the party to execute a bond or deposit security. The court shall set the amount and condition the bond or security on compliance with the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Oglesby v. Silcott, 620 S.W.2d 820 (Tex. App.—Tyler 1981, no writ). A trial court did not abuse its discretion when it modified a divorce decree to condition visitation by a mother and maternal grandfather upon payment of a $10,000 bond because the mother and grandfather had taken physical custody of the child and removed him from the possession of the managing conservator, who was forced to file a lawsuit to secure the return of the child, and the grandfather owned property in several places distant from the child's residence.

Sec. 153.012. RIGHT TO PRIVACY; DELETION OF PERSONAL INFORMATION IN RECORDS

The court may order the custodian of records to delete all references in the records to the place of residence of either party appointed as a conservator of the child before the release of the records to another party appointed as a conservator.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 153.013. FALSE REPORT OF CHILD ABUSE

(a) If a party to a pending suit affecting the parent-child relationship makes a report alleging child abuse by another party to the suit that the reporting party knows lacks a factual foundation, the court shall deem the report to be a knowingly false report.

(b) Evidence of a false report of child abuse is admissible in a suit between the involved parties regarding the terms of conservatorship of a child.

(c) If the court makes a finding under Subsection (a), the court shall impose a civil penalty not to exceed $500.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 28, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 786, Sec. 2, eff. Sept. 1, 1997.

Sec. 153.014. VISITATION CENTERS AND VISITATION EXCHANGE FACILITIES

A county may establish a visitation center or a visitation exchange facility for the purpose of facilitating the terms of a court order providing for the possession of or access to a child.

Added by Acts 2001, 77th Leg., ch. 577, Sec. 1, eff. June 11, 2001.

Sec. 153.015. ELECTRONIC COMMUNICATION WITH CHILD BY CONSERVATOR

(a) In this section, "electronic communication" means any communication facilitated by the use of any wired or wireless technology via the Internet or any other electronic media. The term includes communication facilitated by the use of a telephone, electronic mail, instant messaging, videoconferencing, or webcam.

(b) If a conservator of a child requests the court to order periods of electronic communication with the child under this section, the court may award the conservator reasonable periods of electronic communication with the child to supplement the conservator's periods of possession of the child. In determining whether to award electronic communication, the court shall consider:

(1) whether electronic communication is in the best interest of the child;

(2) whether equipment necessary to facilitate the electronic communication is reasonably available to all parties subject to the order; and

(3) any other factor the court considers appropriate.

(c) If a court awards a conservator periods of electronic communication with a child under this section, each conservator subject to the court's order shall:

(1) provide the other conservator with the e-mail address and other electronic communication access information of the child;

(2) notify the other conservator of any change in the e-mail address or other electronic communication access information not later than 24 hours after the date the change takes effect; and

(3) if necessary equipment is reasonably available, accommodate electronic communication with the child, with the same privacy, respect, and dignity accorded all other forms of access, at a reasonable time and for a reasonable duration subject to any limitation provided by the court in the court's order.

(d) The court may not consider the availability of electronic communication as a factor in determining child support. The availability of electronic communication under this section is not intended as a substitute for physical possession of or access to the child where otherwise appropriate.

(e) In a suit in which the court's order contains provisions related to a finding of family violence in the suit, including supervised visitation, the court may award periods of electronic communication under this section only if:

(1) the award and terms of the award are mutually agreed to by the parties; and

(2) the terms of the award:

(A) are printed in the court's order in boldfaced, capitalized type; and

(B) include any specific restrictions relating to family violence or supervised visitation, as applicable, required by other law to be included in a possession or access order.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 7, eff. September 1, 2007.

RESOURCES

Patricia A. Cooper, *Trying a Family Law Case in the Age of Technology*, Adv. Fam. L. (2012).

Katie Pearson Klein, *Unusual Possession Orders*, Adv. Fam. L. (2014).

James T. McLaren, *Big Case Technology*, Adv. Fam. L. (2012).

Kristal C. Thomson, *Social Media and Your Custody Case—Where is the "Dislike" Button?*, Adv. Fam. L. (2012).

SUBCHAPTER B. PARENT APPOINTED AS CONSERVATOR: IN GENERAL

Sec. 153.071. COURT TO SPECIFY RIGHTS AND DUTIES OF PARENT APPOINTED A CONSERVATOR

If both parents are appointed as conservators of the child, the court shall specify the rights and duties of a parent that are to be exercised:

(1) by each parent independently;

(2) by the joint agreement of the parents; and

(3) exclusively by one parent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 153.072. WRITTEN FINDING REQUIRED TO LIMIT PARENTAL RIGHTS AND DUTIES

The court may limit the rights and duties of a parent appointed as a conservator if the court makes a written finding that the limitation is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 153.073. RIGHTS OF PARENT AT ALL TIMES

(a) Unless limited by court order, a parent appointed as a conservator of a child has at all times the right:

(1) to receive information from any other conservator of the child concerning the health, education, and welfare of the child;

(2) to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;

(3) of access to medical, dental, psychological, and educational records of the child;

(4) to consult with a physician, dentist, or psychologist of the child;

(5) to consult with school officials concerning the child's welfare and educational status, including school activities;

(6) to attend school activities**, including school lunches, performances, and field trips**;

(7) to be designated on the child's records as a person to be notified in case of an emergency;

(8) to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

(9) to manage the estate of the child to the extent the estate has been created by the parent or the parent's family.

(b) The court shall specify in the order the rights that a parent retains at all times.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 29, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1036, Sec. 6, eff. Sept. 1, 2003; Acts 2019, 86th Leg., H.B. 3145, Sec. 1, eff. May 27, 2019.

ANNOTATIONS

In re Taylor, 39 S.W.3d 406 (Tex. App.—Waco 2001, orig. proceeding). A trial court had jurisdiction to enforce, by contempt, the provisions of a divorce decree granting an incarcerated father statutory rights to information about the health, education, and welfare of his children, and requiring the mother to confer with him before making decisions about the children, when the mother's pending appeal of the divorce decree did not complain of these provisions.

Abrams v. Jones, 35 S.W.3d 620 (Tex. 2000). This section does not override the provisions of the Texas Health & Safety Code that specifically address parents' rights to the mental health records of their children. The legislature did not intend to give greater rights to divorced parents than to parents who are not divorced.

Sec. 153.074. RIGHTS AND DUTIES DURING PERIOD OF POSSESSION

Unless limited by court order, a parent appointed as a conservator of a child has the following rights and duties during the period that the parent has possession of the child:

(1) the duty of care, control, protection, and reasonable discipline of the child;

(2) the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

(3) the right to consent for the child to medical and dental care not involving an invasive procedure; and

(4) the right to direct the moral and religious training of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 30, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1036, Sec. 7, eff. Sept. 1, 2003.

ANNOTATIONS

In re C.R.T., 61 S.W.3d 62 (Tex. App.—Amarillo 2001, pet. denied). An aunt rebutted the presumption that a parent be appointed managing conservator of the children, and won appointment as the children's sole managing conservator, when the children's mother left them with the aunt and failed to support them even though both the law and a temporary order imposed a duty of support on the mother. No evidence suggested any obstacle that prevented the mother from earning wages sufficient to assist in providing for her children: The mother was living with her own parents and planned to do so indefinitely, she had no driver's license, she was chemically dependent, and she had failed to investigate the children's medical condition until the aunt directed her to do so.

Hopkins v. Hopkins, 853 S.W.2d 134 (Tex. App.—Corpus Christi 1993, no writ). A person with rights of "access to" children may approach them, communicate with them, and visit with them but may not take possession or control of the children away from their managing conservator. Conversely, a person with rights to "possession of" children may exercise possession and control of children to the exclusion of all other persons, including managing conservators, during the possessory conservator's periods of possession and also has rights and responsibilities for the children's care and behavior.

Davis v. Davis, 794 S.W.2d 930 (Tex. App.—Dallas 1990, no writ). The authority and obligation of a possessory conservator are not equivalent to the authority and obligations of one to whom a court has awarded custody. The term "custody" or "managing conservatorship" connotes, among other things, the right of a legal custodian to establish a legal domicile for a child. This right does not abide with a parent who enjoys only an occasional right of visitation. Custody embraces the sum of parental rights with respect to the rearing of a child, including its care, the right to the child's services and earnings, the right to direct the child's activities, and the right to make decisions regarding the child's care and control, education, health, and religion.

Chapa v. State, 747 S.W.2d 561 (Tex. App.—Amarillo 1988, pet. ref'd). A managing conservator has the duty to provide a child with basic, elementary, and essential necessities of life, including care when that care is required to protect the child's life and physical well-being.

Sec. 153.075. DUTIES OF PARENT NOT APPOINTED CONSERVATOR

The court may order a parent not appointed as a managing or a possessory conservator to perform other parental duties, including paying child support.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 153.076. DUTY TO PROVIDE INFORMATION

(a) The court shall order that each conservator of a child has a duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child.

(b) The court shall order that each conservator of a child has the duty to inform the other conservator of the child if the conservator resides with for at least 30 days, marries, or intends to marry a person who the conservator knows:

(1) is registered as a sex offender under Chapter 62, Code of Criminal Procedure; or

(2) is currently charged with an offense for which on conviction the person would be required to register under that chapter.

(b–1) The court shall order that each conservator of a child has the duty to inform the other conservator of the child if the conservator:

(1) establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established;

(2) resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the expiration of the 60-day period following the date the final protective order is issued; or

(3) is the subject of a final protective order issued after the date of the order establishing conservatorship.

(c) The notice required to be made under Subsection (b) must be made as soon as practicable but not later than the 40th day after the date the conservator of the child begins to reside with the person or the 10th day after the date the marriage occurs, as appropriate. The notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged.

(c–1) The notice required to be made under Subsection (b–1) must be made as soon as practicable but not later than:

(1) the 30th day after the date the conservator establishes residence with the person who is the subject of the final protective order, if the notice is required by Subsection (b–1)(1);

(2) the 90th day after the date the final protective order was issued, if the notice is required by Subsection (b–1)(2); or

(3) the 30th day after the date the final protective order was issued, if the notice is required by Subsection (b–1)(3).

(d) A conservator commits an offense if the conservator fails to provide notice in the manner required by Subsections (b) and (c), or Subsections (b–1) and (c–1), as applicable. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 31, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 330, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1036, Sec. 8, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1166 (S.B. 818), Sec. 1, eff. September 1, 2015.

SUBCHAPTER C. PARENT APPOINTED AS SOLE OR JOINT MANAGING CONSERVATOR

Sec. 153.131. PRESUMPTION THAT PARENT TO BE APPOINTED MANAGING CONSERVATOR

(a) Subject to the prohibition in Section 153.004, unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child.

(b) It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child. A finding of a history of family violence involving the parents of a child removes the presumption under this subsection.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 32, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1193, Sec. 20, eff. Sept. 1, 1997.

ANNOTATIONS

Turrubiartes v. Olvera, 539 S.W.3d 524 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). Immigration status, standing alone, is not probative of a parent's fitness to be a parent to her children so as to deny her joint managing conservatorship.

Berwick v. Wagner, 509 S.W.3d 411 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). Only the difference between a parent and a nonparent has legal significance in determining who should be appointed sole or joint managing conservator of a child; the difference between a biological parent and a nonbiological parent does not.

In re H.R.L., 458 S.W.3d 23, 30 (Tex. App.—El Paso 2014, orig. proceeding). Section 153.131 establishes a rebuttable presumption that appointment of a parent as the sole managing conservator or both parents as joint managing conservators is in the best interest of the child. This presumption may be overcome by evidence that the appointment "would significantly impair the child's physical health or emotional development." Given the existence of this presumption, a nonparent will not satisfy her burden by offering evidence that she would be a better custodian of the child. The nonparent must offer evidence of specific acts or omissions of the parent that demonstrate that an award of custody to the parents would cause physical or emotional harm to the child.

In re L.D.F., 445 S.W.3d 823 (Tex. App.—El Paso 2014, no pet.). Physical abuse, severe neglect, abandonment, drug or alcohol abuse, or immoral behavior on the part of the parent are all factors the trial court may consider in assessing significant impairment. While past misconduct alone may not be sufficient to show present unfitness, an adult's future conduct may be somewhat determined by recent past conduct. Because safety, security, and stability are critical to child development, the danger of uprooting a child may in some instances rise to a level that significantly impairs the child's emotional development.

In re Marriage of Butts, 444 S.W.3d 147 (Tex. App.—Houston [14th Dist.] 2014, no pet.). The trial court is required to presume that the appointment of the parents as joint managing conservators is in the best interest of the child until evidence is presented to rebut this presumption. The party seeking appointment as sole managing conservator has the burden to rebut the presumption.

In re V.L.K., 24 S.W.3d 338 (Tex. 2000). The presumption that the best interest of a child is served by awarding custody to a parent is deeply embedded in state law and is based upon the natural affection usually flowing between parent and child.

Critz v. Critz, 297 S.W.3d 464 (Tex. App.—Fort Worth 2009, no pet.). It is presumed that appointment of both parents as joint managing conservators is in a child's best interest. A nonparent may not be appointed a joint managing conservator without overcoming this presumption as to both parents.

In re B.B.M., 291 S.W.3d 463 (Tex. App.—Dallas 2009, pet. denied). The fundamental liberty interest of a natural parent in the care, custody, and management of his or her child cannot be infringed absent evidence that such care, custody, and management by the natural parent would result in physical or emotional harm to the child.

In re M.W., 959 S.W.2d 661 (Tex. App.—Tyler 1997, writ denied). One who seeks to rebut the presumption that appointing a parent as managing conservator of a child is in the child's best interest must demonstrate present parental unfitness. Evidence of past misconduct might not, by itself, be sufficient to show present parental unfitness. Simply presenting evidence that a nonparent, such as a grandparent, would be a better choice than a parent as a child's custodian is inadequate for appointment as a managing conservator.

Ybarra v. Texas Department of Human Services, 869 S.W.2d 574 (Tex. App.—Corpus Christi 1993, no writ). Parents are preferred as managing conservators. A court may deny a parent custody of the parent's children only if there is evidence that appointment of a parent as a child's custodian would significantly impair the child's physical health or emotional development.

RESOURCES

Angeline Bain, Aimee Pingenot, Kevin Fuller & Emily Miskel, *Standing for the Not-So-Nuclear Family*, U.T. Innovations—Breaking Boundaries in Custody Litigation (2012).

Bret A. Bosker & Kate H. McConnico, *Moving Away: Dealing with Residency Restriction Issues*, So. Tex. Fam. L. Conf. (2009).

Emily Miskel, *SAPCR Overview: Presumptions, Burdens, Statutes, and Case Law*, Adv. Fam. L. (2014).

Barbara D. Nunneley, *Rights, Powers and Duties: Creative Solutions*, Adv. Fam. L. (2012).

Sec. 153.132. RIGHTS AND DUTIES OF PARENT APPOINTED SOLE MANAGING CONSERVATOR

Unless limited by court order, a parent appointed as sole managing conservator of a child has the rights and duties provided by Subchapter B and the following exclusive rights:

(1) the right to designate the primary residence of the child;

(2) the right to consent to medical, dental, and surgical treatment involving invasive procedures;

(3) the right to consent to psychiatric and psychological treatment;

(4) the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;

(5) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(6) the right to consent to marriage and to enlistment in the armed forces of the United States;

(7) the right to make decisions concerning the child's education;

(8) the right to the services and earnings of the child; ~~and~~

(9) except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; **and**

(10) the right to:

(A) apply for a passport for the child;

(B) renew the child's passport; and

(C) maintain possession of the child's passport.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 33, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1036, Sec. 9, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 10, eff. June 18, 2005. Acts 2019, 86th Leg., H.B. 555, Sec. 1, eff. Sept. 1, 2019.

Section 3 of Acts 2019, 86th Leg., H.B. 555 states—

"The changes in law made by this Act apply only to a suit affecting the parent-child relationship that is pending in a trial court on or filed on or after the effective date of this Act."

ANNOTATIONS

In re A.S., 298 S.W.3d 834 (Tex. App.—Amarillo 2009, no pet.). A trial court has the authority to impose geographical restrictions on the location of a child's primary residence because this section grants the sole managing conservator the right to designate the child's primary residence "unless limited by court order."

In re Kubankin, 257 S.W.3d 852 (Tex. App.—Waco 2008, orig. proceeding) (per curiam). A trial court erred in failing to grant a father's petition for writ of habeas corpus because, although the parties' agreed order did not give either party the exclusive right to designate the child's primary residence, it did appoint the father managing conservator, allowed the mother limited visitation rights, and gave the father "the right to have physical possession" of the child.

Lueg v. Lueg, 976 S.W.2d 308 (Tex. App.—Corpus Christi 1998, pet. denied). A trial court abused its discretion when it ordered the children's managing conservator to pay child support to their possessory conservator.

Enochs v. Brown, 872 S.W.2d 312 (Tex. App.—Austin 1994, no writ), *disapproved on other grounds*, *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003). A father had no standing to challenge the validity or interpretation of a contingent fee agreement, entered into by a child's sole managing conservator mother on the child's behalf following injuries to the child from an accident, because a sole managing conservator has the exclusive right to represent a child in legal actions and to make substantial legal decisions for the child.

Corley v. Corley, 546 S.W.2d 884 (Tex. Civ. App.—Fort Worth 1977, no writ). A trial court abused its discretion when it ordered that a child could visit his possessory conservator mother without interference or control by his managing conservator father.

RESOURCES

Kristal C. Thomson, *Rethinking Rights & Duties*, Adv. Fam. L. (2017).

Sec. 153.133. PARENTING PLAN FOR JOINT MANAGING CONSERVATORSHIP

(a) If a written agreed parenting plan is filed with the court, the court shall render an order appointing the parents as joint managing conservators only if the parenting plan:

(1) designates the conservator who has the exclusive right to designate the primary residence of the child and:

(A) establishes, until modified by further order, the geographic area within which the conservator shall maintain the child's primary residence; or

(B) specifies that the conservator may designate the child's primary residence without regard to geographic location;

(2) specifies the rights and duties of each parent regarding the child's physical care, support, and education;

(3) includes provisions to minimize disruption of the child's education, daily routine, and association with friends;

(4) allocates between the parents, independently, jointly, or exclusively, all of the remaining rights and duties of a parent provided by Chapter 151;

(5) is voluntarily and knowingly made by each parent and has not been repudiated by either parent at the time the order is rendered; and

(6) is in the best interest of the child.

(b) The agreed parenting plan may contain an alternative dispute resolution procedure that the parties agree to use before requesting enforcement or modification of the terms and conditions of the joint conservatorship through litigation, except in an emergency.

(c) Notwithstanding Subsection (a)(1), the court shall render an order adopting the provisions of a written agreed parenting plan appointing the parents as joint managing conservators if the parenting plan:

(1) meets all the requirements of Subsections (a)(2) through (6); and

(2) provides that the child's primary residence shall be within a specified geographic area.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 936, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1036, Sec. 10, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 4, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 3, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 3, eff. September 1, 2009.

Sec. 153.134. COURT-ORDERED JOINT CONSERVATORSHIP

(a) If a written agreed parenting plan is not filed with the court, the court may render an order appointing the parents joint managing conservators only if the appointment is in the best interest of the child, considering the following factors:

(1) whether the physical, psychological, or emotional needs and development of the child will benefit from the appointment of joint managing conservators;

(2) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;

(3) whether each parent can encourage and accept a positive relationship between the child and the other parent;

(4) whether both parents participated in child rearing before the filing of the suit;

(5) the geographical proximity of the parents' residences;

(6) if the child is 12 years of age or older, the child's preference, if any, regarding the person to have the exclusive right to designate the primary residence of the child; and

(7) any other relevant factor.

(b) In rendering an order appointing joint managing conservators, the court shall:

(1) designate the conservator who has the exclusive right to determine the primary residence of the child and:

(A) establish, until modified by further order, a geographic area within which the conservator shall maintain the child's primary residence; or

(B) specify that the conservator may determine the child's primary residence without regard to geographic location;

(2) specify the rights and duties of each parent regarding the child's physical care, support, and education;

(3) include provisions to minimize disruption of the child's education, daily routine, and association with friends;

(4) allocate between the parents, independently, jointly, or exclusively, all of the remaining rights and duties of a parent as provided by Chapter 151; and

(5) if feasible, recommend that the parties use an alternative dispute resolution method before requesting enforcement or modification of the terms and conditions of the joint conservatorship through litigation, except in an emergency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 936, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1036, Sec. 11, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 5, eff. September 1, 2005. Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 11, eff. June 18, 2005.

ANNOTATIONS

Berwick v. Wagner, 509 S.W.3d 411 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). Whether appointment of one parent as sole managing conservator is in a child's best interest depends not on the parent's ability to parent individually, but instead on several statutory factors related to the parents' ability to effectively coparent. These include whether the parents can encourage and accept a positive parent-child relationship with the other parent, whether the parties can prioritize the child's welfare, and whether the parents can reach shared decisions in the child's best interest.

In re C.R.A., 453 S.W.3d 623 (Tex. App.—Fort Worth 2014, no pet.). The Family Code requires a divorce decree to designate one parent as having the exclusive right to determine a child's primary residence.

In re M.A.M., 346 S.W.3d 10 (Tex. App.—Dallas 2011, pet. denied). A trial court retains broad discretion in crafting the rights and duties of each conservator so as to effectuate the best interest of the child.

Morgan v. Morgan, 254 S.W.3d 485 (Tex. App.—Beaumont 2008, no pet.). When relocation issues are litigated in an original case regarding joint conservatorship of children, the primary consideration is the best interest of the child.

Gardner v. Gardner, 229 S.W.3d 747 (Tex. App.—San Antonio 2007, no pet.). When making the determination of which joint managing conservator will have the exclusive right to designate a child's primary residence, the trial court considers the best interest of the child.

Bates v. Tesar, 81 S.W.3d 411 (Tex. App.—El Paso 2002, no pet.). A former version of subsection 153.134(b) required a trial court to "establish a geographic area consisting of the county in which the child is to reside and any contiguous county thereto." Nevertheless, a trial court did not abuse its discretion when it denied a mother's request to relocate with the parties' child in the county in which the father lived and all contiguous counties rather than only the county in which the father lived despite the suggestion that the word "any" meant a county plus at least one contiguous county.

Jenkins v. Jenkins, 16 S.W.3d 473 (Tex. App.—El Paso 2000, no pet.). Even though a former version of subsection 153.134(b) required a trial court to "establish the county of residence of the child," a trial court had the authority to restrict a child's residence to a specific house within that county. The requirement to establish a child's primary residence is mandatory, but it is mandatory only in the sense that any order signed by the trial court appointing a joint managing conservatorship must contain language delineating the various rights and duties of the conservators listed.

RESOURCES

Mary Johanna McCurley & Paula A. Bennett, *Relocation*, Adv. Fam. L. (2013).

Emily Miskel, *SAPCR Overview: Presumptions, Burdens, Statutes, and Case Law*, Adv. Fam. L. (2014).

Barbara D. Nunneley, *Rights, Powers and Duties: Creative Solutions*, Adv. Fam. L. (2012).

Sec. 153.135. EQUAL POSSESSION NOT REQUIRED

Joint managing conservatorship does not require the award of equal or nearly equal periods of physical possession of and access to the child to each of the joint conservators.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

K.T. v. M.T., No. 02-14-00044-CV, 2015 WL 4910097 (Tex. App.—Fort Worth 2015, no pet.) (mem. op.). A trial court need not award joint managing conservators "equal or nearly equal periods of physical possession of and access to the child."

Norris v. Norris, 56 S.W.3d 333 (Tex. App.—El Paso 2001, no pet.). A trial court did not abuse its discretion when it denied a father's request to have possession of the children every other week because the trial court's duty is to consider the children's best interest, not that of the father; there is no statutory presumption that equal possession is in a child's best interest; and the modification order substantially expanded the father's possession of the children from the amount agreed upon at the time of divorce.

Sec. 153.138. CHILD SUPPORT ORDER AFFECTING JOINT CONSERVATORS

The appointment of joint managing conservators does not impair or limit the authority of the court to order a joint managing conservator to pay child support to another joint managing conservator.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re E.R.C., 496 S.W.3d 270 (Tex. App.—Texarkana 2016, pet. denied), *cert. denied sub nom. Stokes v. Corsbie*, 137 S. Ct. 834 (2017). When a joint managing conservatorship is ordered, the trial court may order one joint managing conservator to pay child support to the other joint managing conservator.

SUBCHAPTER D. PARENT APPOINTED AS POSSESSORY CONSERVATOR

Sec. 153.191. PRESUMPTION THAT PARENT TO BE APPOINTED POSSESSORY CONSERVATOR

The court shall appoint as a possessory conservator a parent who is not appointed as a sole or joint managing conservator unless it finds that the appointment is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re Walters, 39 S.W.3d 280 (Tex. App.—Texarkana 2001, no pet.). When a trial court appoints a parent possessory conservator, it can conclude that access would not endanger the physical or emotional welfare of the child but that access is not in the best interest of the child. A trial court has two options regarding possession and access when it appoints a parent possessory conservator and decides that the standard possession order is not in the best interest of the child. It can: (1) fashion an order that restricts possession or access so as to eliminate any danger to the physical or emotional welfare of the child; or (2) deny that parent possession and access. However, because appointment of a parent as possessory conservator implies a finding that access by that parent will not endanger the physical or emotional welfare of the child, a complete denial of access should be rare.

Hopkins v. Hopkins, 853 S.W.2d 134 (Tex. App.—Corpus Christi 1993, no writ). Trial courts have only two options after appointing one parent sole managing conservator. If the best interest of the child is served by granting the other parent possession or access, then the court must appoint that parent as possessory conservator. If it is not in the best interest of the child for the other parent to have possession of or access to the child, and possession or access would endanger the physical or emotional welfare of the child, then the court has discretion to refuse to appoint that parent as a possessory conservator.

Allison v. Allison, 660 S.W.2d 134 (Tex. App.—San Antonio 1983, no writ). A court will not completely deny the right of a parent to visit his or her children, placed in the custody of the other parent by a divorce decree, except when there are extreme grounds to support complete denial.

Gani v. Gani, 500 S.W.2d 254 (Tex. Civ. App.—Texarkana 1973, no writ). Failure to pay support as ordered, standing alone and unexplained, does not necessarily deem a father as unfit to have visitation with his child.

Liddell v. Liddell, 29 S.W.2d 868 (Tex. Civ. App.—San Antonio 1930, no writ). Parents should at least have periodic visiting privileges with their child and should not be denied them except in extreme cases of unfitness.

RESOURCES

Emily Miskel, *SAPCR Overview: Presumptions, Burdens, Statutes, and Case Law*, Adv. Fam. L. (2014).

Sec. 153.192. RIGHTS AND DUTIES OF PARENT APPOINTED POSSESSORY CONSERVATOR

(a) Unless limited by court order, a parent appointed as possessory conservator of a child has the rights and duties provided by Subchapter B and any other right or duty expressly granted to the possessory conservator in the order.

(b) In ordering the terms and conditions for possession of a child by a parent appointed possessory conservator, the court shall be guided by the guidelines in Subchapter E.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 153.193. MINIMAL RESTRICTION ON PARENT'S POSSESSION OR ACCESS

The terms of an order that denies possession of a child to a parent or imposes restrictions or limitations on a parent's right to possession of or access to a child may not exceed those that are required to protect the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re H.D.C., 474 S.W.3d 758 (Tex. App.—Houston [14th Dist.] 2014, no pet.). The trial court has broad discretion in fashioning restrictions on a parent's possession and access that are in the best interest of the child. The trial court abuses its discretion, however, if it imposes restrictions that exceed those required to protect the best interests of the child. A restriction requiring the mother to be "off work" and "present" to exercise her summer period of possession exceeds that which is required to protect the best interests of the children because a less burdensome restriction can serve the trial court's reasonable requirement that the children be properly supervised at all times.

In re S.A.H., 420 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2014, no pet.). The trial court has broad discretion in fashioning restrictions on a parent's possession and access that are in the best interest of the child; however, restrictions on possession cannot exceed those that are required to protect the best interest of the child, and there must be record evidence to support a finding that a restriction is in the child's best interest.

In re J.S.P., 278 S.W.3d 414 (Tex. App.—San Antonio 2008, no pet.). A trial court's ultimate goal is to minimize the restrictions placed on a parent's right of possession of or access to the parent's child.

In re Walters, 39 S.W.3d 280 (Tex. App.—Texarkana 2001, no pet.). When a trial court appoints a parent possessory conservator, it cannot conclude that access, even restricted access, would endanger the physical or emotional

welfare of the child because such a conclusion would prevent the trial court from appointing the parent possessory conservator.

Green v. Green, 850 S.W.2d 809 (Tex. App.—El Paso 1993, no writ). A trial court's judgment regarding what serves the best interest of a child concerning visitation, specifically the establishment of terms and conditions of conservatorship, will be reversed only if the trial court abused its discretion.

In re Johnson, 494 S.W.2d 943 (Tex. Civ. App.—Amarillo 1973, no writ). The extent of visitation by a noncustodial parent is largely within the discretion of a trial court, taking into consideration the welfare of the child.

Hill v. Hill, 423 S.W.2d 943 (Tex. Civ. App.—Houston [1st Dist.] 1968, no writ). In determining whether a parent is morally fit to have visitation periods with his children who are in the custody of the other parent by a divorce decree, the welfare of the children is of primary importance and concern to the court, and the court has sound discretion in making that determination.

SUBCHAPTER E. GUIDELINES FOR THE POSSESSION OF A CHILD BY A PARENT NAMED AS POSSESSORY CONSERVATOR

Sec. 153.251. POLICY AND GENERAL APPLICATION OF GUIDELINES

(a) The guidelines established in the standard possession order are intended to guide the courts in ordering the terms and conditions for possession of a child by a parent named as a possessory conservator or as the minimum possession for a joint managing conservator.

(b) It is the policy of this state to encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and child.

(c) It is preferable for all children in a family to be together during periods of possession.

(d) The standard possession order is designed to apply to a child three years of age or older.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Gardner v. Gardner, 229 S.W.3d 747 (Tex. App.—San Antonio 2007, no pet.). The Family Code contains no requirement that a party show or a trial court find clear and compelling reasons for separating children during periods of possession. Rather, a trial court's primary consideration in deciding the issue of possession is the best interest of the children, and the policy favoring keeping children together during periods of possession is a factor the trial court considers in deciding what is in the children's best interest.

Bergerac v. Maloney, 478 S.W.2d 111 (Tex. Civ. App.—Beaumont 1972, no writ). A parent who is not morally unfit has a fundamental right to visit and be with his children, but under the terms and conditions set out by the trial court, whose discretion is subject to review only on a showing of clear abuse.

Sec. 153.252. REBUTTABLE PRESUMPTION

In a suit, there is a rebuttable presumption that the standard possession order in Subchapter F:

(1) provides reasonable minimum possession of a child for a parent named as a possessory conservator or joint managing conservator; and

(2) is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Goodson v. Castellanos, 214 S.W.3d 741 (Tex. App.—Austin 2007, pet. denied). A same-sex couple that adopted a child held equal parental rights to the child. Accordingly, when the couple broke up, the Family Code authorized a trial court to appoint one of the parents sole managing conservator of the child, to appoint the other parent possessory conservator, to issue the standard possession order, and to require the possessory conservator to make child support payments and to provide health insurance for the child.

Niskar v. Niskar, 136 S.W.3d 749 (Tex. App.—Dallas 2004, no pet.). A trial court was entitled to deviate from the standard possession order in a divorce decree by denying the father overnight visitation or possession of his severely disabled daughter for two years when the child was blind, confined to a wheelchair, fed through a tube, and was severely retarded, and the father was not involved in her medical care before the divorce.

In re B.N.F., 120 S.W.3d 873 (Tex. App.—Fort Worth 2003, no pet.). A trial court's decision to grant a mother unsupervised visitation according to the standard possession order did not violate the section requiring a trial court to consider commission of family violence in determining parental possession rights when the testimony regarding the mother's prior conviction for sexual assault of a child, as well as the mother's counselor's letter addressing the mother's past behavior, allowed for the conclusion that the trial court did consider the mother's past behavior in deciding to grant unsupervised visitation.

In re Doe, 917 S.W.2d 139 (Tex. App.—Texarkana 1996, writ denied). A rebuttable presumption exists that the standard order regarding minimum possession of a child for a parent named as possessory conservator is in the child's best interest, but a trial court has discretion in devising a possession order if it determines that application of the standard order would be unworkable or inappropriate under the circumstances.

Prause v. Wilder, 820 S.W.2d 386 (Tex. App.—Texarkana 1991, no writ). A trial court may rely on standard guidelines for visitation in reaching its decision on a motion for modification. There is a rebuttable presumption that the standard order provides reasonable minimum visitation and that it is in the best interest of the child, but the primary consideration remains the best interest of the child.

Sec. 153.253. STANDARD POSSESSION ORDER INAPPROPRIATE OR UNWORKABLE

The court shall render an order that grants periods of possession of the child as similar as possible to those provided by the standard possession order if the work schedule or other special circumstances of the managing conservator, the possessory conservator, or the child, or the year-round school schedule of the child, make the standard order unworkable or inappropriate.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re K.R., No. 02-15-00276-CV, 2016 WL 3198611 (Tex. App.—Fort Worth June 9, 2016, no pet.) (mem. op.). If special circumstances make the standard possession order unworkable or inappropriate, the trial court shall render an order that grants periods of possession of the child as similar as possible to those provided by the standard possession order.

Mason-Murphy v. Grabowski, 317 S.W.3d 923 (Tex. App.—Austin 2010, no pet.). A trial court's order incorporating a father's election of extended standard weekend possession of the parties' child, by returning the child to school Monday morning rather than to the mother on Sunday evening, was not inconsistent with this section.

Sec. 153.254. CHILD LESS THAN THREE YEARS OF AGE

(a) The court shall render an order appropriate under the circumstances for possession of a child less than three years of age. In rendering the order, the court shall consider evidence of all relevant factors, including:

(1) the caregiving provided to the child before and during the current suit;

(2) the effect on the child that may result from separation from either party;

(3) the availability of the parties as caregivers and the willingness of the parties to personally care for the child;

(4) the physical, medical, behavioral, and developmental needs of the child;

(5) the physical, medical, emotional, economic, and social conditions of the parties;

(6) the impact and influence of individuals, other than the parties, who will be present during periods of possession;

(7) the presence of siblings during periods of possession;

(8) the child's need to develop healthy attachments to both parents;

(9) the child's need for continuity of routine;

(10) the location and proximity of the residences of the parties;

(11) the need for a temporary possession schedule that incrementally shifts to the schedule provided in the prospective order under Subsection (d) based on:

(A) the age of the child; or

(B) minimal or inconsistent contact with the child by a party;

(12) the ability of the parties to share in the responsibilities, rights, and duties of parenting; and

(13) any other evidence of the best interest of the child.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 12(1), eff. Sept. 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 12(1), eff. Sept. 1, 2017.

(d) The court shall render a prospective order to take effect on the child's third birthday, which presumptively will be the standard possession order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 86 (S.B. 820), Sec. 1, eff. September 1, 2011; Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 12(1), eff. Sept. 1, 2017.

RESOURCES

Diana S. Friedman & Taylor T. Imel, *Possession and Access For Children Under Three*, Adv. Fam. L. (2011).

Katie Pearson Klein, *Unusual Possession Orders*, Adv. Fam. L. (2014).

Sec. 153.255. AGREEMENT

The court may render an order for periods of possession of a child that vary from the standard possession order based on the agreement of the parties.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 153.256. FACTORS FOR COURT TO CONSIDER

In ordering the terms of possession of a child under an order other than a standard possession order, the court shall be guided by the guidelines established by the standard possession order and may consider:

(1) the age, developmental status, circumstances, needs, and best interest of the child;

(2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and

(3) any other relevant factor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 35, eff. Sept. 1, 1995.

ANNOTATIONS

In re Marriage of Swim, 291 S.W.3d 500 (Tex. App.—Amarillo 2009, no pet.). In the context of child custody, a reviewing court's holding that a trial court did not abuse its discretion implies that the evidence contained in the record rebutted the presumption that the standard possession order was reasonable and in the child's best interest.

In re C.B.M., 14 S.W.3d 855 (Tex. App.—Beaumont 2000, no pet.). A trial court is not required to find that a child is endangered before signing an order limiting a father's visitation to an amount less than that provided for in the standard possession order.

Sec. 153.257. MEANS OF TRAVEL

In an order providing for the terms and conditions of possession of a child, the court may restrict the means of travel of the child by a legal mode of transportation only after a showing of good cause contained in the record and a finding by the court that the restriction is in the best interest of the child. The court shall specify the duties of the conservators to provide transportation to and from the transportation facilities.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Grayson v. Grayson, 103 S.W.3d 559 (Tex. App.—San Antonio 2003, no pet.) (mem. op.). A trial court has statutory authority in divorce proceedings to require a father to pay the cost of airline tickets and airline escort fees for the children when they visit him because this section provides that a court shall specify the duties of the conservators in providing transportation to and from transportation facilities.

Sec. 153.258. REQUEST FOR FINDINGS WHEN ORDER VARIES FROM STANDARD ORDER

(a) In all cases in which possession of a child by a parent is contested and the possession of the child varies from the standard possession order, including a possession order for a child under three years of age, on request by a party, the court shall state in writing the specific reasons for the variance from the standard order.

(b) A request for findings of fact under this section must conform to the Texas Rules of Civil Procedure.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 9, eff. Sept. 1, 2017.

ANNOTATIONS

In re T.J.S., 71 S.W.3d 452 (Tex. App.—Waco 2002, pet. denied). A trial court that appointed would-be adoptive parents joint managing conservators of a child, and the biological father possessory conservator, did not abuse its discretion by varying from the standard possession order given the unique working schedules of the joint managing conservators, the school/work schedule of the father, and the father's special circumstances of life, consisting of his young age and his absence from the child's life in any practical or meaningful fashion until trial.

In re Walters, 39 S.W.3d 280 (Tex. App.—Texarkana 2001, no pet.). A trial court did not abuse its discretion by ordering more restrictive access for a mother than under the standard possession order when the mother had put the child at risk and the mother had concealed her alcoholism.

Voros v. Turnage, 856 S.W.2d 759 (Tex. App.—Houston [1st Dist.] 1993, writ denied). A rebuttable presumption exists that the standard possession order provides the minimum possession of a child for a parent named as possessory conservator and that the order is in the best interest of the child, and if a judge orders less time of possession than the guidelines require, it is mandatory that the judge, upon timely request, state in the order the specific reasons for all deviations from the standard possession order.

In re D.C., No. 05-12-01574-CV, 2014 WL 1887611 (Tex. App.—Dallas May 9, 2014, no pet.) (mem. op.). Request for fact findings pursuant to Tex. R. Civ. P. 296 does not preserve the right to findings under section 153.258, and the trial court was not required to enter findings under that section.

RESOURCES

Chris Nickelson, *Findings of Fact and Conclusions of Law: What You're Supposed to Write and How It Will Help You*, Adv. Fam. L. Drafting (2015).

SUBCHAPTER F. STANDARD POSSESSION ORDER

Sec. 153.3101. REFERENCE TO "SCHOOL" IN STANDARD POSSESSION ORDER

In a standard possession order, "school" means the elementary or secondary school in which the child is enrolled or, if the child is not enrolled in an elementary or secondary school, the public school district in which the child primarily resides.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 4, eff. September 1, 2009. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1167 (S.B. 821), Sec. 3, eff. September 1, 2015.

Sec. 153.311. MUTUAL AGREEMENT OR SPECIFIED TERMS FOR POSSESSION

The court shall specify in a standard possession order that the parties may have possession of the child at times mutually agreed to in advance by the parties and, in the absence of mutual agreement, shall have possession of the child under the specified terms set out in the standard possession order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 5, eff. September 1, 2009.

ANNOTATIONS

Roosth v. Roosth, 889 S.W.2d 445 (Tex. App.—Houston [14th Dist.] 1994, writ denied). The provision of a divorce decree appointing the mother sole managing conservator of four children and limiting the father's possession of them to times mutually agreed to in advance by the mother and only upon agreement by the mother did not meet the standards required for enforceability by contempt. Thus, the divorce decree effectively denied the father's right to visitation with his children because the decree did not state in clear and unambiguous terms what the mother had to do to comply with it and instead gave her complete discretion to determine when, where, and whether the father could have possession of or access to the children.

Voros v. Turnage, 856 S.W.2d 759 (Tex. App.—Houston [1st Dist.] 1993, writ denied). A trial court could deviate from the standard possession order by eliminating Wednesday and extended holiday visitation when it offset the elimination of midweek visitation and extended holiday visitation by granting the possessory conservator a telephonic visit with the children on two Wednesdays each month and increased possession time during the children's summer vacation.

Sec. 153.312. PARENTS WHO RESIDE 100 MILES OR LESS APART

(a) If the possessory conservator resides 100 miles or less from the primary residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) on weekends throughout the year beginning at 6 p.m. on the first, third, and fifth Friday of each month and ending at 6 p.m. on the following Sunday; and

(2) on Thursdays of each week during the regular school term beginning at 6 p.m. and ending at 8 p.m., unless the court finds that visitation under this subdivision is not in the best interest of the child.

(b) The following provisions govern possession of the child for vacations and certain specific holidays and supersede conflicting weekend or Thursday periods of possession. The possessory conservator and the managing conservator shall have rights of possession of the child as follows:

(1) the possessory conservator shall have possession in even-numbered years, beginning at 6 p.m. on the day the child is dismissed from school for the school's spring vacation and ending at 6 p.m. on the day before school resumes after that vacation, and the managing conservator shall have possession for the same period in odd-numbered years;

(2) if a possessory conservator:

(A) gives the managing conservator written notice by April 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 30 days beginning not earlier than the day after the child's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each, with each period of possession beginning and ending at 6 p.m. on each applicable day; or

(B) does not give the managing conservator written notice by April 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 30 consecutive days beginning at 6 p.m. on July 1 and ending at 6 p.m. on July 31;

(3) if the managing conservator gives the possessory conservator written notice by April 15 of each year, the managing conservator shall have possession of the child on any one weekend beginning Friday at 6 p.m. and ending at 6 p.m. on the following Sunday during one period of possession by the possessory conservator under Subdivision (2), provided that the managing conservator picks up the child from the possessory conservator and returns the child to that same place; and

(4) if the managing conservator gives the possessory conservator written notice by April 15 of each year or gives the possessory conservator 14 days' written notice on or after April 16 of each year, the managing conservator may designate one weekend beginning not earlier than the day after the child's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, during which an otherwise scheduled weekend period of possession by the possessory conservator will not take place, provided that the weekend designated does not interfere with the possessory conservator's period or periods of extended summer possession or with Father's Day if the possessory conservator is the father of the child.

(c) Notwithstanding Section 153.316, after receiving notice from the managing conservator under Subsection (b)(3) of this section designating the summer weekend during which the manag-

ing conservator is to have possession of the child, the possessory conservator, not later than the 15th day before the Friday that begins that designated weekend, must give the managing conservator written notice of the location at which the managing conservator is to pick up and return the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 802, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 236, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1036, Sec. 13, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 12, eff. June 18, 2005. Acts 2007, 80th Leg., R.S., Ch. 1041 (H.B. 1864), Sec. 2, eff. June 15, 2007. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 6, eff. September 1, 2009. Acts 2019, 86th Leg., H.B. 553, Sec. 1, eff. Sept. 1, 2019.

Section 2 of Acts 2019, 86th Leg., H.B. 553 states—

"Section 153.312(c), Family Code, as added by this Act, applies only to a court order providing for possession of or access to a child rendered on or after the effective date of this Act. A court order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose."

ANNOTATIONS

In re S.A.H., 420 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2014, no pet.). A court may deviate from the terms of the standard order, if those terms would be unworkable or inappropriate and against the child's best interest, but it must include in the order the reasons for any deviation. In ordering terms other than those contained in a standard order, a court may consider (1) the age, developmental status, circumstances, needs, and best interest of the child; (2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and (3) any other relevant factors.

Garza v. Garza, 217 S.W.3d 538 (Tex. App.—San Antonio 2006, no pet.). A trial court properly considered the children's young ages and their need to stay in a close relationship with their father, with whom they primarily resided, when it found that separating the mother's two periods of fourteen-day summer possession by a period of at least fourteen consecutive days was in the best interest of the children based on a doctor's recommendation that the couple's children should not be removed from either parent for longer than two weeks without a weekend in between.

Ohendalski v. Ohendalski, 203 S.W.3d 910 (Tex. App.—Beaumont 2006, no pet.). A trial court did not abuse its discretion by prohibiting a father from driving while his children were passengers and limiting his access to the children to sixty-four hours per month without provision for holidays, summer visitation, birthdays, or Father's Day when the father had committed acts of family violence in the presence of one or more of the children, demonstrated a history of chronic alcohol abuse, terrorized one or more of the children by operating his vehicle while under the influence of alcohol while the children were passengers, consumed alcohol during periods of supervised visitation, and agreed prior to the divorce to arrange transportation from his home to the children's home at end of his periods of possession.

In re Davis, 30 S.W.3d 609 (Tex. App.—Texarkana 2000, no pet.). Given a six-year-old child's routine and the difficulty her father encountered in driving the two-hour round trip between their homes during the middle of the school week, the evidence supported the trial court's finding that to allow the father overnight midweek visitation would not be in the child's best interest.

RESOURCES

Benjamin J. Albritton, David D. Farr, Gary L. Nickelson & Mary Madison Eagle, *50-50 Possession: Wave of the Future or Judicial Tsunami?*, Adv. Fam. L. (2018).

James L. Arth, Erin Bowden, Lisa K. Hoppes, Susan Myres & Whitney Vaughan, *50/50 Possession*, Adv. Fam. L. (2017).

Sec. 153.313. PARENTS WHO RESIDE OVER 100 MILES APART

If the possessory conservator resides more than 100 miles from the residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) either regular weekend possession beginning on the first, third, and fifth Friday as provided under the terms applicable to parents who reside 100 miles or less apart or not more than one weekend per month of the possessory conservator's choice beginning at 6 p.m. on the day school recesses for the weekend and ending at 6 p.m. on the day before school resumes after the weekend, provided that the possessory conservator gives the managing conservator 14 days' written or telephonic notice preceding a designated weekend, and provided that the possessory conservator elects an option for this alternative period of possession by written notice given to the managing conservator within 90 days after the parties begin to reside more than 100 miles apart, as applicable;

(2) each year beginning at 6 p.m. on the day the child is dismissed from school for the school's spring vacation and ending at 6 p.m. on the day before school resumes after that vacation;

(3) if the possessory conservator:

(A) gives the managing conservator written notice by April 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 42 days beginning not earlier than the day after the child's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each, with each period of possession beginning and ending at 6 p.m. on each applicable day; or

(B) does not give the managing conservator written notice by April 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 42 consecutive days beginning at 6 p.m. on June 15 and ending at 6 p.m. on July 27;

(4) if the managing conservator gives the possessory conservator written notice by April 15 of each year the managing conservator shall have possession of the child on one weekend beginning Friday at 6 p.m. and ending at 6 p.m. on the following Sunday during one period of possession by the possessory conservator under Subdivision (3), provided that if a period of possession by the possessory conservator exceeds 30 days, the managing conservator may have possession of the child under the terms of this subdivision on two nonconsecutive weekends during that time period, and further provided that the managing conservator picks up the child from the possessory conservator and returns the child to that same place; and

(5) if the managing conservator gives the possessory conservator written notice by April 15 of each year, the managing conservator may designate 21 days beginning not earlier than the day after the child's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each, with each period of possession beginning and ending at 6 p.m. on each applicable day, during which the possessory conservator may not have possession of the child, provided that the period or periods so designated do not interfere with the possessory conservator's period or periods of extended summer possession or with Father's Day if the possessory conservator is the father of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 36, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 236, Sec. 2, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 7, eff. September 1, 2009.

Sec. 153.314. HOLIDAY POSSESSION UNAFFECTED BY DISTANCE PARENTS RESIDE APART

The following provisions govern possession of the child for certain specific holidays and supersede conflicting weekend or Thursday periods of possession without regard to the distance the parents reside apart. The possessory conservator and the managing conservator shall have rights of possession of the child as follows:

(1) the possessory conservator shall have possession of the child in even-numbered years beginning at 6 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 28, and the managing conservator shall have possession for the same period in odd-numbered years;

(2) the possessory conservator shall have possession of the child in odd-numbered years beginning at noon on December 28 and ending at 6 p.m. on the day before school resumes after that vacation, and the managing conservator shall have possession for the same period in even-numbered years;

(3) the possessory conservator shall have possession of the child in odd-numbered years, beginning at 6 p.m. on the day the child is dismissed from school before Thanksgiving and ending at 6 p.m. on the following Sunday, and the managing conservator shall have possession for the same period in even-numbered years;

(4) the parent not otherwise entitled under this standard possession order to present possession of a child on the child's birthday shall have possession of the child beginning at 6 p.m. and ending at 8 p.m. on that day, provided that the parent picks up the child from the residence of the conservator entitled to possession and returns the child to that same place;

(5) if a conservator, the father shall have possession of the child beginning at 6 p.m. on the Friday preceding Father's Day and ending on Father's Day at 6 p.m., provided that, if he is not otherwise entitled under this standard possession order to present possession of the child, he picks up the child from the residence of the conservator entitled to possession and returns the child to that same place; and

(6) if a conservator, the mother shall have possession of the child beginning at 6 p.m. on the Friday preceding Mother's Day and ending on Mother's Day at 6 p.m., provided that, if she is not otherwise entitled under this standard possession order to present possession of the child, she picks up the child from the residence of the conservator entitled to possession and returns the child to that same place.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1036, Sec. 14, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1041 (H.B. 1864), Sec. 3, eff. June 15, 2007. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 8, eff. September 1, 2009.

Sec. 153.315. WEEKEND POSSESSION EXTENDED BY HOLIDAY

(a) If a weekend period of possession of the possessory conservator coincides with a student holiday or teacher in-service day that falls on a Monday during the regular school term, as determined by the school in which the child is enrolled, or with a federal, state, or local holiday that falls on a Monday during the summer months in which school is not in session, the weekend possession shall end at 6 p.m. on Monday.

(b) If a weekend period of possession of the possessory conservator coincides with a student holiday or teacher in-service day that falls on a Friday during the regular school term, as determined by the school in which the child is enrolled, or with a federal, state, or local holiday that falls on a Friday during the summer months in which school is not in session, the weekend possession shall begin at 6 p.m. on Thursday.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 9, eff. September 1, 2009.

Sec. 153.316. GENERAL TERMS AND CONDITIONS

The court shall order the following general terms and conditions of possession of a child to apply without regard to the distance between the residence of a parent and the child:

(1) the managing conservator shall surrender the child to the possessory conservator at the beginning of each period of the possessory conservator's possession at the residence of the managing conservator;

(2) if the possessory conservator elects to begin a period of possession at the time the child's school is regularly dismissed, the managing conservator shall surrender the child to the possessory conservator at the beginning of each period of possession at the school in which the child is enrolled;

(3) the possessory conservator shall be ordered to do one of the following:

(A) the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the residence of the possessory conservator; or

(B) the possessory conservator shall return the child to the residence of the managing conservator at the end of each period of possession, except that the order shall provide that the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the residence of the possessory conservator if:

(i) at the time the original order or a modification of an order establishing terms and conditions of possession or access the possessory conservator and the managing conservator lived in the same county, the possessory conservator's county of residence remains the same after the rendition of the order, and the managing conservator's county of residence changes, effective on the date of the change of residence by the managing conservator; or

(ii) the possessory conservator and managing conservator lived in the same residence at any time during a six-month period preceding the date on which a suit for dissolution of the marriage was filed and the possessory conservator's county of residence remains the same and the managing conservator's county of residence changes after they no longer live in the same residence, effective on the date the order is rendered;

(4) if the possessory conservator elects to end a period of possession at the time the child's school resumes, the possessory conservator shall surrender the child to the managing conservator at the end of each period of possession at the school in which the child is enrolled;

(5) each conservator shall return with the child the personal effects that the child brought at the beginning of the period of possession;

(6) either parent may designate a competent adult to pick up and return the child, as applicable; a parent or a designated competent adult shall be present when the child is picked up or returned;

(7) a parent shall give notice to the person in possession of the child on each occasion that the parent will be unable to exercise that parent's right of possession for a specified period;

(8) written notice, including notice provided by electronic mail or facsimile, shall be deemed to have been timely made if received or, if applicable, postmarked before or at the time that notice is due; and

(9) if a conservator's time of possession of a child ends at the time school resumes and for any reason the child is not or will not be returned to school, the conservator in possession of the child shall immediately notify the school and the other conservator that the child will not be or has not been returned to school.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 37, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 9, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 277 (H.B. 845), Sec. 1, eff. September 1, 2013.

ANNOTATIONS

In re E.M.V., 312 S.W.3d 288 (Tex. App.—Dallas 2010, no pet.). A wife's testimony that her husband was a violent man who had committed multiple acts of violence toward her in the previous two years, that the parties' daughter had witnessed some of the violence, and that the husband agreed to restricted access to the daughter with supervised visitation supported a trial court's decision to restrict the husband's visitation with the daughter.

In re Marriage of Bertram, 981 S.W.2d 820 (Tex. App.—Texarkana 1998, no pet.). A trial court abused its discretion when it ordered a father, who was part owner of a private plane and who as a commercial pilot had some access to discounted air transportation, to pay all air travel for visitation between Wisconsin and Texas when, after using all discounts, the airfare would cost $6,400 per year.

Villasenor v. Villasenor, 911 S.W.2d 411 (Tex. App.—San Antonio 1995, no writ). A trial court did not abuse its discretion by granting a father's request restricting the county of residence of his minor boys to his county of residence because granting the mother's request to move away would have meant that father and sons would not continue to enjoy a close relationship and the boys would be separated from their older sister.

Sec. 153.317. ALTERNATIVE BEGINNING AND ENDING POSSESSION TIMES

(a) If elected by a conservator, the court shall alter the standard possession order under Sections 153.312, 153.314, and 153.315 to provide for one or more of the following alternative beginning and ending possession times for the described periods of possession, unless the court finds that the election is not in the best interest of the child:

(1) for weekend periods of possession under Section 153.312(a)(1) during the regular school term:

(A) beginning at the time the child's school is regularly dismissed;

(B) ending at the time the child's school resumes after the weekend; or

(C) beginning at the time described by Paragraph (A) and ending at the time described by Paragraph (B);

(2) for Thursday periods of possession under Section 153.312(a)(2):

(A) beginning at the time the child's school is regularly dismissed;

(B) ending at the time the child's school resumes on Friday; or

(C) beginning at the time described by Paragraph (A) and ending at the time described by Paragraph (B);

(3) for spring vacation periods of possession under Section 153.312(b)(1), beginning at the time the child's school is dismissed for those vacations;

(4) for Christmas school vacation periods of possession under Section 153.314(1), beginning at the time the child's school is dismissed for the vacation;

(5) for Thanksgiving holiday periods of possession under Section 153.314(3), beginning at the time the child's school is dismissed for the holiday;

(6) for Father's Day periods of possession under Section 153.314(5), ending at 8 a.m. on the Monday after Father's Day weekend;

(7) for Mother's Day periods of possession under Section 153.314(6):

(A) beginning at the time the child's school is regularly dismissed on the Friday preceding Mother's Day;

(B) ending at the time the child's school resumes after Mother's Day; or

(C) beginning at the time described by Paragraph (A) and ending at the time described by Paragraph (B); or

(8) for weekend periods of possession that are extended under Section 153.315(b) by a student holiday or teacher in-service day that falls on a Friday, beginning at the time the child's school is regularly dismissed on Thursday.

(b) A conservator must make an election under Subsection (a) before or at the time of the rendition of a possession order. The election may be made:

(1) in a written document filed with the court; or

(2) through an oral statement made in open court on the record.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 9, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1036, Sec. 15, eff. Sept. 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 10, eff. September 1, 2009. Acts 2013, 83rd Leg., R.S., Ch. 277 (H.B. 845), Sec. 2, eff. September 1, 2013.

ANNOTATIONS

Howe v. Howe, 551 S.W.3d 236 (Tex.App.—El Paso 2018, no pet.). Section 153.317 requires the possessory conservator to make the election "*before* or *at the time of* the rendition of a possession order." The final decree was signed at a hearing on March 2, 2016. The final decree recites that the divorce was "judicially PRONOUNCED AND RENDERED in court at Bastrop, Bastrop County, Texas, on February 17, 2016 and further noted on the court's docket sheet on the same date but signed on March 2, 2016." Based on the recitation that judgment was rendered on February 17, 2016, the request for the extended visitation period came too late.

In re C.A.P., Jr., 233 S.W.3d 896 (Tex. App.—Fort Worth 2007, no pet.). A possessory conservator must request extended visitation with school-age children before or at a hearing on a modification request that meets the statutory prerequisites for modification of a possession order.

In re Davis, 30 S.W.3d 609 (Tex. App.—Texarkana 2000, no pet.). A party seeking a modified visitation order to include overnight Sunday or midweek visitation must first comply with the section allowing modification only if the circumstances of the child or a parent have changed or if the order has become unworkable. Only then is the court required to apply the mandatory election language to order overnight visitation. A party showed a change of circumstances when two of the four children had reached their majority and the youngest child, who was one year old at time of divorce, was six years old and enrolled in kindergarten.

Jacobs v. Dobrei, 991 S.W.2d 462 (Tex. App.—Dallas 1999, no pet.). Given the animosity between a child's parents, which had the potential of erupting before the child and his classmates, a trial court did not abuse its discretion when it refused a father's election to modify his possession period to return the child to his mother on Monday mornings at school rather than on Sunday night.

SUBCHAPTER G. APPOINTMENT OF NONPARENT AS CONSERVATOR

Sec. 153.371. RIGHTS AND DUTIES OF NONPARENT APPOINTED AS SOLE MANAGING CONSERVATOR

Unless limited by court order or other provisions of this chapter, a nonparent, a licensed child-placing agency, or the Department of Family and Protective Services appointed as a managing conservator of the child has the following rights and duties:

(1) the right to have physical possession and to direct the moral and religious training of the child;

(2) the duty of care, control, protection, and reasonable discipline of the child;

(3) the duty to provide the child with clothing, food, shelter, education, and medical, psychological, and dental care;

(4) the right to consent for the child to medical, psychiatric, psychological, dental, and surgical treatment and to have access to the child's medical records;

(5) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;

(6) the right to the services and earnings of the child;

(7) the right to consent to marriage and to enlistment in the armed forces of the United States;

(8) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(9) except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

(10) the right to designate the primary residence of the child and to make decisions regarding the child's education; ~~and~~

(11) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the right to consent to the adoption of the child and to make any other decision concerning the child that a parent could make; **and**

(12) the right to:

(A) apply for a passport for the child;

(B) renew the child's passport; and

(C) maintain possession of the child's passport.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 34, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 949, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1036, Sec. 16, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.044, eff. April 2, 2015. Acts 2019, 86th Leg., H.B. 555, Sec. 2, eff. Sept. 1, 2019.

Section 3 of Acts 2019, 86th Leg., H.B. 555 states—

"The changes in law made by this Act apply only to a suit affecting the parent-child relationship that is pending in a trial court on or filed on or after the effective date of this Act."

ANNOTATIONS

Office of Attorney General v. Carter, 977 S.W.2d 159 (Tex. App.—Houston [14th Dist.] 1998, no pet.). A court may not withhold child support from a parent's income and order it to be paid to an individual who has no legal duty to support a child, such as a grandparent who has not been appointed a child's custodian or guardian, because such an order is contrary to public policy.

Lehmann v. Lehmann, 537 S.W.2d 131 (Tex. Civ. App.—Fort Worth 1976, no writ). A court of appeals affirmed the decision of a trial court to grant a writ of habeas corpus to a Minnesota father when, under a Minnesota order modifying the parties' Minnesota divorce, the father had custody of the children. The writ issued because a person found in possession of a minor without permission of a court or a lawful custodian is depriving the minor of his liberty.

Sec. 153.372. NONPARENT APPOINTED AS JOINT MANAGING CONSERVATOR

(a) A nonparent, the Department of Family and Protective Services, or a licensed child-placing agency appointed as a joint managing conservator may serve in that capacity with either another nonparent or with a parent of the child.

(b) The procedural and substantive standards regarding an agreed or court-ordered joint managing conservatorship provided by Subchapter C apply to a nonparent joint managing conservator.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.045, eff. April 2, 2015.

ANNOTATIONS

In re L.D.F., 445 S.W.3d 823 (Tex. App.—El Paso 2014, no pet.). When a trial court appoints a parent and nonparent as joint managing conservators, it implicitly rules that parent's sole custody would significantly impair the child's physical health or emotional development. Physical abuse, severe neglect, abandonment, drug or alcohol abuse, or immoral behavior on the part of the parent are all factors the trial court may consider in assessing significant impairment. While past misconduct alone may not be sufficient to show present unfitness, an adult's future conduct may be somewhat determined by recent past conduct. Because safety, security, and stability are critical to child development, the danger of uprooting a child may in some instances rise to a level that significantly impairs the child's emotional development.

Sec. 153.3721. ACCESS TO CERTAIN RECORDS BY NONPARENT JOINT MANAGING CONSERVATOR

Unless limited by court order or other provisions of this chapter, a nonparent joint managing conservator has the right of access to the medical records of the child, without regard to whether the right is specified in the order.

Added by Acts 1999, 76th Leg., ch. 949, Sec. 2, eff. Sept. 1, 1999.

Sec. 153.373. VOLUNTARY SURRENDER OF POSSESSION REBUTS PARENTAL PRESUMPTION

The presumption that a parent should be appointed or retained as managing conservator of the child is rebutted if the court finds that:

(1) the parent has voluntarily relinquished actual care, control, and possession of the child to a nonparent, a licensed child-placing agency, or the Department of Family and Protective Services for a period of one year or more, a portion of which was within 90 days preceding the date of intervention in or filing of the suit; and

(2) the appointment of the nonparent, agency, or Department of Family and Protective Services as managing conservator is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.046, eff. April 2, 2015.

ANNOTATIONS

In re Crumbley, 404 S.W.3d 156 (Tex. App.—Texarkana 2013, no pet.). There is a strong presumption that the best interest of a child is served if a natural parent is appointed as a managing conservator. A parent shall be appointed as sole managing conservator, or the parents as joint managing conservators, unless the court finds the appointment would not be in the best interest of the child because it would significantly impair the child's physical health or emotional development. There must be evidence to support the logical inference that some specific, identifiable behavior or conduct of the parent will probably cause that harm. A trial court's conclusion that the parental presumption has been rebutted must be supported by specific findings of fact identifying the factual basis for the finding, and the failure to make such findings constitutes error.

Critz v. Critz, 297 S.W.3d 464 (Tex. App.—Fort Worth 2009, no pet.). To overcome the presumption that appointment of "the parents of a child" as joint managing conservators is in the best interest of the child, a court must find that: (1) appointment of the parents would significantly impair the child's physical health or emotional development; (2) the parents have exhibited a history of family violence; or (3) the parents voluntarily relinquished care, control, and possession of the child to a nonparent for a year or more. Impairment of a child's physical health or emotional development is a heavy burden which cannot be satisfied by showing merely that the nonparent would be a better custodian of the child. Rather, impairment requires proof that specific, identifiable behavior or conduct of a parent, demonstrated by specific acts or omissions of the parent, probably will cause that harm. "Close calls" should be decided in favor of the parent. The evidence did not show voluntary relinquishment for a substantial part of a year when, between January and April, a mother maintained her permanent residence with her child and saw him on the majority of days and, although she often was physically separated from the child the rest of the year, she did not intend to relinquish control of him.

In re T.J.S., 71 S.W.3d 452 (Tex. App.—Waco 2002, pet. denied). Rebutting the presumption that a parent be appointed sole or managing conservator of a child based on voluntary surrender of the child does not require a showing that appointment of the parents would not be in the best interest of the child. A father waived any error in a trial court's failure to instruct a jury on the rebuttable parental presumption regarding appointment as managing conservator because the father did not object to an instruction that placed nonparents on an equal footing with the father and that did not require a finding of voluntary relinquishment by the father before appointing a nonparent as managing conservator.

R.S. v. B.J.J., 883 S.W.2d 711 (Tex. App.—Dallas 1994, no writ). The evidence supported the implied finding that the children's parents voluntarily relinquished custody of them to nonparents for the statutorily required period when a nonparent stated that she kept the children's mother informed of her addresses, and the father knew of the children's whereabouts because a reasonable inference could have been drawn that the mother would tell the father where the children were living.

McCord v. Watts, 777 S.W.2d 809 (Tex. App.—Austin 1989, no writ). Paternal grandparents had standing to intervene in a divorce case, subject to the trial court's discretion to strike their intervention, to seek appointment as a child's managing conservators.

Herod v. Davidson, 650 S.W.2d 501 (Tex. App.—Houston [14th Dist.] 1983, no writ). Grandparents had standing to file a plea in intervention in a divorce case when they alleged that they had had continuous custody of their grandson for over two years, that they had provided most of his support during that time period, and that the child's parents were separated and living in environments which were unsuitable for the child.

Cravens v. Eisenbach, 487 S.W.2d 254 (Tex. Civ. App.—Austin 1972, no writ). When a father, who had delivered custody of his daughter to her maternal grandparents and never had contributed to her support or given her presents, later married a woman with five children from two prior marriages, who recently had undergone open heart surgery, the evidence supported granting custody to the grandparents, with visitation rights for the father, when the grandparents were persons of moral and financial substance and with an atmosphere of love and closeness in their home.

Kohls v. Kohls, 461 S.W.2d 455 (Tex. Civ. App.—Corpus Christi 1970, writ ref'd n.r.e.). A minor child's grandparents, to whom the child's mother had attempted to relinquish her custodial rights, could assert custodial rights even though the mother's attempted renouncement of custody was void and even as against the child's father, because a court could determine custody as between a natural parent and a third party based on the child's best interest.

McBrien v. Zacha, 351 S.W.2d 101 (Tex. Civ. App.—Dallas 1961, writ ref'd n.r.e.). A trial court properly allowed a maternal grandmother to intervene in a divorce case to seek custody because she had an interest in the welfare of her grandchild.

Sec. 153.374. DESIGNATION OF MANAGING CONSERVATOR IN AFFIDAVIT OF RELINQUISHMENT

(a) A parent may designate a competent person, the Department of Family and Protective Services, or a licensed child-placing agency to serve as managing conservator of the child in an unrevoked or irrevocable affidavit of relinquishment of parental rights executed as provided by Chapter 161.

(b) The person, Department of Family and Protective Services, or agency designated to serve as managing conservator shall be appointed managing conservator unless the court finds that the appointment would not be in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 38, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.047, eff. April 2, 2015.

ANNOTATIONS

Monroe v. Alternatives in Motion, 234 S.W.3d 56 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Appointing a child's paternal grandparents as managing conservators was not in the child's best interest when the child was two years old at the time of the termination trial, she had lived her whole life with her prospective adoptive parents in North Dakota, she had never met her grandparents, her mother chose the prospective adoptive parents to raise the child, and a social worker testified that the child had bonded with the prospective adoptive parents and that it would be traumatic and detrimental to remove the child from the family.

Department of Family & Protective Services v. Alternatives in Motion, 210 S.W.3d 794 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). Although appointment of a party designated in an affidavit of relinquishment in place of the parent whose rights are voluntarily terminated is automatic for the purpose of termination of parental rights proceedings, appointment of that party as managing conservator in a suit to determine conservatorship of the child is subject to proof that the appointment is in the child's best interest.

In re D.R.L.M., 84 S.W.3d 281 (Tex. App.—Fort Worth 2002, pet. denied). This section requires a court to terminate parental rights if the parent executed an unrevoked affidavit of relinquishment of parental rights and termination is in the best interest of the child, but it does not require a court to abide by the terminated parent's choice of managing conservator.

Sec. 153.375. ANNUAL REPORT BY NONPARENT MANAGING CONSERVATOR

(a) A nonparent appointed as a managing conservator of a child shall each 12 months after the appointment file with the court a report of facts concerning the child's welfare, including the child's whereabouts and physical condition.

(b) The report may not be admitted in evidence in a subsequent suit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 153.376. RIGHTS AND DUTIES OF NONPARENT POSSESSORY CONSERVATOR

(a) Unless limited by court order or other provisions of this chapter, a nonparent, a licensed child-placing agency, or the Department of Family and Protective Services appointed as a possessory conservator has the following rights and duties during the period of possession:

(1) the duty of care, control, protection, and reasonable discipline of the child;

(2) the duty to provide the child with clothing, food, and shelter; and

(3) the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child.

(b) A nonparent possessory conservator has any other right or duty specified in the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.048, eff. April 2, 2015.

ANNOTATIONS

In re Cassey D., 783 S.W.2d 592 (Tex. App.—Houston [1st Dist.] 1990, no writ). A court is under no obligation to order specific visitation privileges for an adult friend of a handicapped, institutionalized child. The trial court was not compelled to accept the mother's viewpoint that appointment of the handicapped child's adult friend as copossessory conservator would be in the child's best interest. Strong attachment alone does not conclusively establish that the appointment of a child's adult friend as copossessory conservator would be in the child's best interest.

Sec. 153.377. ACCESS TO CHILD'S RECORDS

A nonparent possessory conservator has the right of access to medical, dental, psychological, and educational records of the child to the same extent as the managing conservator, without regard to whether the right is specified in the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

SUBCHAPTER H. RIGHTS OF GRANDPARENT, AUNT, OR UNCLE

Sec. 153.431. APPOINTMENT OF GRANDPARENT, AUNT, OR UNCLE AS MANAGING CONSERVATOR

If both of the parents of a child are deceased, the court may consider appointment of a parent, sister, or brother of a deceased parent as a managing conservator of the child, but that consideration does not alter or diminish the discretionary power of the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 484 (H.B. 261), Sec. 2, eff. September 1, 2005.

Sec. 153.432. SUIT FOR POSSESSION OR ACCESS BY GRANDPARENT

(a) A biological or adoptive grandparent may request possession of or access to a grandchild by filing:

(1) an original suit; or

(2) a suit for modification as provided by Chapter 156.

(b) A grandparent may request possession of or access to a grandchild in a suit filed for the sole purpose of requesting the relief, without regard to whether the appointment of a managing conservator is an issue in the suit.

(c) In a suit described by Subsection (a), the person filing the suit must execute and attach an affidavit on knowledge or belief that contains, along with supporting facts, the allegation that denial of possession of or access to the child by the petitioner would significantly impair the child's physical health or emotional well-being. The court shall deny the relief sought and dismiss the suit unless the court determines that the facts stated in the affidavit, if true, would be sufficient to support the relief authorized under Section 153.433.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 484 (H.B. 261), Sec. 3, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 11, eff. September 1, 2009.

ANNOTATIONS

In re Derzapf, 219 S.W.3d 327 (Tex. 2007, orig. proceeding) (per curiam). This section grants standing to seek possession of or access to a grandchild only to a biological or adoptive grandparent, and not to a stepgrandparent.

In re Mays-Hooper, 189 S.W.3d 777 (Tex. 2006, orig. proceeding) (per curiam). A paternal grandmother was not entitled to visitation with her grandchild when there was no evidence that the child's mother was unfit, no evidence that the child's health or emotional well-being would suffer if the trial court deferred to the mother's decisions, and no evidence that the mother intended to exclude the grandmother's access to the child completely.

In re C.D.M., No. 11-15-00319-CV, 2016 WL 5853261 (Tex. App.—Eastland Oct. 6, 2016, no pet.) (mem. op.). When a grandparent pleads for conservatorship under section 102.003 and in the alternative for access pursuant to section 153.432, and the pleadings assert standing in accordance with the statutory scheme under section 102.003, those pleadings are sufficient to confer standing unless challenged. Father did not challenge the grandparents' standing under the general statute but only asserted a defect regarding their affidavit in support of relief under section 153.433, the grandparent access statute. Standing under section 102.003 does not require a family relationship and when grandparent seeks relief and qualifies under the general standing grounds the requirements for an affidavit under the grandparent access statute do not apply.

In re Russell, 321 S.W.3d 846 (Tex. App.—Fort Worth 2010, orig. proceeding). The fact that a stepfather was a presumed father did not make his parents biological grandparents under this section.

In re Smith, 260 S.W.3d 568 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). This section grants an adoptive or biological grandparent standing to seek possession of or access to a grandchild unless section 153.434 limits that standing. Section 153.433 identifies the conditions under which such possession or access will be granted, which is a different question than whether a grandparent has the right to bring suit.

In re H.M.J.H., 209 S.W.3d 320 (Tex. App.—Dallas 2006, no pet.). A grandmother who intervened in proceedings terminating the parental rights of both her grandchild's parents was not entitled to possession of or access to the grandchild absent evidence establishing that she had met statutory conditions for possession or access to the grandchild.

Sec. 153.433. POSSESSION OF OR ACCESS TO GRANDCHILD

(a) The court may order reasonable possession of or access to a grandchild by a grandparent if:

(1) at the time the relief is requested, at least one biological or adoptive parent of the child has not had that parent's parental rights terminated;

(2) the grandparent requesting possession of or access to the child overcomes the presumption that a parent acts in the best interest of the parent's child by proving by a preponder-

ance of the evidence that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being; and

(3) the grandparent requesting possession of or access to the child is a parent of a parent of the child and that parent of the child:

(A) has been incarcerated in jail or prison during the three-month period preceding the filing of the petition;

(B) has been found by a court to be incompetent;

(C) is dead; or

(D) does not have actual or court-ordered possession of or access to the child.

(b) An order granting possession of or access to a child by a grandparent that is rendered over a parent's objections must state, with specificity that:

(1) at the time the relief was requested, at least one biological or adoptive parent of the child had not had that parent's parental rights terminated;

(2) the grandparent requesting possession of or access to the child has overcome the presumption that a parent acts in the best interest of the parent's child by proving by a preponderance of the evidence that the denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being; and

(3) the grandparent requesting possession of or access to the child is a parent of a parent of the child and that parent of the child:

(A) has been incarcerated in jail or prison during the three-month period preceding the filing of the petition;

(B) has been found by a court to be incompetent;

(C) is dead; or

(D) does not have actual or court-ordered possession of or access to the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 1397, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 484 (H.B. 261), Sec. 4, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 12, eff. September 1, 2009.

ANNOTATIONS

In re Scheller, 325 S.W.3d 640 (Tex. 2010, orig. proceeding) (per curiam). A maternal grandfather failed to establish that denial of access to his grandchildren would significantly impair the grandchildren's physical health or emotional well-being when, although the grandfather presented evidence that the grandchildren experienced anger and nightmares following their mother's death, there was no evidence of anything more substantial than the grandchildren's understandable sadness resulting from losing a family member and missing their grandparents. Moreover, the children's father had taken responsible, precautionary measures to ensure that the children were able to cope with their grief, and the father was willing to allow the grandfather to see his grandchildren with conditions.

In re J.M.G., 553 S.W.3d 137 (Tex. App.—El Paso 2018, orig. proceeding). Section 153.433 requires that a grandparent seeking court-ordered possession or access overcome the presumption that a parent acts in his or her child's best interest by proving by a preponderance of the evidence that denial of access to the child would significantly impair the child's physical health or emotional well-being. This requirement exists to prevent a court from interfering with child-rearing decisions made by a parent simply because the court believes that a "better decision" could have been made. Under the statute, a trial court must presume that a fit parent acts in his or her child's best interest, and the court abuses its discretion if it grants access to a grandparent who has not met this standard.

In re C.D.M., No. 11-15-00319-CV, 2016 WL 5853261 (Tex. App.—Eastland Oct. 6, 2016, no pet.) (mem. op.). When a grandparent pleads for conservatorship under section 102.003 and in the alternative for access pursuant to

section 153.432, and the pleadings assert standing in accordance with the statutory scheme under section 102.003, those pleadings are sufficient to confer standing unless challenged. Father did not challenge the grandparents' standing under the general statute but only asserted a defect regarding their affidavit in support of relief under section 153.433, the grandparent access statute. Standing under section 102.003 does not require a family relationship and when grandparent seeks relief and qualifies under the general standing grounds the requirements for an affidavit under the grandparent access statute do not apply.

In re B.G.D., 351 S.W.3d 131 (Tex. App.—Fort Worth 2011, no pet.). Denial of possession of or access to a child is an express element a grandparent must prove to obtain access.

In re M.T.C., 299 S.W.3d 474 (Tex. App.—Texarkana 2009, no pet.). A trial court did not err when it denied a maternal grandfather's request to be named joint managing conservator and to have access to his grandchildren when the grandchildren had not had substantial past contact with the grandfather, seeing him only a couple of times per year, and despite the breakup of their mother and stepfather, the children were doing well in their current situation and excelling in their current school.

In re J.M.T., 280 S.W.3d 490 (Tex. App.—Eastland 2009, no pet.). A grandparent seeking court-ordered access must overcome the presumption that a parent acts in his child's best interest by proving by a preponderance of the evidence that denial of access to the child would significantly impair the child's physical health or emotional well-being. A trial court abuses its discretion when it grants access to a grandparent who has not met this standard because a trial court has no discretion in determining what the law is or in applying the law to the facts, even when the law is unsettled.

In re Smith, 260 S.W.3d 568 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). This section governs whether a grandparent will succeed in obtaining possession of or access to a grandchild, which is a different question than whether a grandparent has the right simply to bring suit. Section 153.432 grants an adoptive or biological grandparent standing to seek possession of or access to a grandchild unless section 153.434 limits that standing.

In re W.M., 172 S.W.3d 718 (Tex. App.—Fort Worth 2005, no pet.). A trial court did not abuse its discretion when it terminated the parental rights of both parents, granted the TDFPS permanent managing conservatorship of the children, declined to appoint foster parents as possessory conservators, and denied access to grandparents when the trial court had appointed TDFPS permanent managing conservator of one of the children fifteen months earlier. A caseworker stated that there were emotional concerns with access, and the foster mother had concerns about a child's temper tantrums and sickness after grandparent visits and the level of care that both children received while with their grandparents. The foster mother also feared that the grandparents might not bring one of the children home after visitation, even though the grandparents never threatened to run with the child and had never been threatening, intimidating, or abusive to the foster mother or her husband.

In re C.P.J., 129 S.W.3d 573 (Tex. App.—Dallas 2003, pet. denied). This section did not violate a father's due process rights by permitting maternal grandparent access over his objections when the father had agreed to the original order, which provided for grandparent visitation and found that visitation was in the best interest of the children; the trial court reduced and modified the grandparents' visitation schedule based on the father's complaints; and the grandparents expressed concern that the father would not permit visitation in the absence of a court order.

Sec. 153.434. Limitation on Right to Request Possession or Access

A biological or adoptive grandparent may not request possession of or access to a grandchild if:

(1) each of the biological parents of the grandchild has:

(A) died;

(B) had the person's parental rights terminated; or

(C) executed an affidavit of waiver of interest in child or an affidavit of relinquishment of parental rights under Chapter 161 and the affidavit designates the Department of Family and Protective Services, a licensed child-placing agency, or a person other than the child's stepparent as the managing conservator of the child; and

(2) the grandchild has been adopted, or is the subject of a pending suit for adoption, by a person other than the child's stepparent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1390, Sec. 13, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.049, eff. April 2, 2015.

ANNOTATIONS

Martinez v. Estrada, 392 S.W.3d 261 (Tex. App.—San Antonio 2012, pet. denied). A grandparent who requests access to grandchildren in the alternative to adopting the grandchildren loses standing to request access once the grandchildren are adopted by a person who is not a stepparent.

In re Smith, 260 S.W.3d 568 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). This section limits the standing conferred upon grandparents by section 153.432. Section 153.433 governs whether a grandparent will succeed in obtaining possession of or access to a grandchild, which is a different question than whether a grandparent has the right simply to bring suit.

In re H.G., 267 S.W.3d 120 (Tex. App.—San Antonio 2008, pet. denied). Estoppel or quasi-estoppel did not confer standing on maternal biological grandparents of adopted children to file suit, after the adoptive parents' divorce, to seek grandparent access to the children, even though the grandparents had been the managing conservators at the time of adoption and claimed they would not have consented to the adoption but for the adoptive parents' representations that the grandparents would be permitted on-going visitation, because the Family Code does not provide biological grandparents with standing to seek access after grandchildren have been adopted. The grandparents did not seek continued access to the children in the adoption proceeding, and standing was a matter of subject matter jurisdiction which could not be conferred or taken away by consent or waiver.

SUBCHAPTER I. PREVENTION OF INTERNATIONAL PARENTAL CHILD ABDUCTION

Sec. 153.501. NECESSITY OF MEASURES TO PREVENT INTERNATIONAL PARENTAL CHILD ABDUCTION

(a) In a suit, if credible evidence is presented to the court indicating a potential risk of the international abduction of a child by a parent of the child, the court, on its own motion or at the request of a party to the suit, shall determine under this section whether it is necessary for the court to take one or more of the measures described by Section 153.503 to protect the child from the risk of abduction by the parent.

(b) In determining whether to take any of the measures described by Section 153.503, the court shall consider:

(1) the public policies of this state described by Section 153.001(a) and the consideration of the best interest of the child under Section 153.002;

(2) the risk of international abduction of the child by a parent of the child based on the court's evaluation of the risk factors described by Section 153.502;

(3) any obstacles to locating, recovering, and returning the child if the child is abducted to a foreign country; and

(4) the potential physical or psychological harm to the child if the child is abducted to a foreign country.

Added by Acts 2003, 78th Leg., ch. 612, Sec. 1, eff. June 20, 2003.

ANNOTATIONS

Arredondo v. Betancourt, 383 S.W.3d 730 (Tex. App.—Houston [14th Dist.] 2012, no pet.). A trial court imposed an injunction that permanently enjoined the mother from traveling outside the continental United States without father's prior, written consent; it was not directed to travel with the child, surrender of the child's passport, or restrictions on obtaining travel-related documents for the child. The trial court has broad discretion to impose abduction-prevention measures and may order "passport and travel controls" not limited to those specifically listed in subsection 153.503(4). However, the travel restrictions imposed by the trial court were not directed to international child-abduction prevention, but instead enjoined the mother's ability to travel generally, even without the child. Because the injunction was overly broad, unreasonably restrictive, and unrelated to either the child's best interest or the prevention of international child-abduction prevention, it violated the mother's constitutional right to travel.

In re R.M.T., 352 S.W.3d 12 (Tex. App.—Texarkana 2011, no pet.). A court did not deny a father due process by failing to grant a continuance until the father regained his mental competency. There is no Texas authority which would permit a trial court to halt termination proceedings due to the incompetency of the parent. Moreover, children have an interest in an accurate resolution and just decision in termination of parental rights cases as well as a strong interest in a final decision on termination so that adoption to a stable home or return to the parents is not unduly prolonged.

In re Sigmar, 270 S.W.3d 289 (Tex. App.—Waco 2008, orig. proceeding). Slavish adherence to public policies that children have frequent and continuing contact with both parents, that children be raised in safe and stable environments, and that both parents share in the duties of child-raising, which a trial court must consider pursuant to statutes governing prevention of international parental child abduction, may not be warranted when other factors dictate that abduction prevention measures are necessary.

RESOURCES

Laura D. Dale, *International Issues—Travel (And Some Other Important Issues!)*, Adv. Fam. L. Drafting (2010).

Lon M. Loveless, *Hague Convention and Other International Issues*, Adv. Fam. L. (2013).

Larry H. Schwartz, Ann Crawford McClure, Richard R. Orsinger & David A. Kazen, *Cases Involving Foreign Nationals*, Adv. Fam. L. (2010).

Sec. 153.502. ABDUCTION RISK FACTORS

(a) To determine whether there is a risk of the international abduction of a child by a parent of the child, the court shall consider evidence that the parent:

(1) has taken, enticed away, kept, withheld, or concealed a child in violation of another person's right of possession of or access to the child, unless the parent presents evidence that the parent believed in good faith that the parent's conduct was necessary to avoid imminent harm to the child or the parent;

(2) has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of another person's right of possession of or access to the child;

(3) lacks financial reason to stay in the United States, including evidence that the parent is financially independent, is able to work outside of the United States, or is unemployed;

(4) has recently engaged in planning activities that could facilitate the removal of the child from the United States by the parent, including:

(A) quitting a job;

(B) selling a primary residence;

(C) terminating a lease;

(D) closing bank accounts;

(E) liquidating other assets;

(F) hiding or destroying documents;

(G) applying for a passport or visa or obtaining other travel documents for the parent or the child; or

(H) applying to obtain the child's birth certificate or school or medical records;

(5) has a history of domestic violence that the court is required to consider under Section 153.004; or

(6) has a criminal history or a history of violating court orders.

(a–1) In considering evidence of planning activities under Subsection (a)(4), the court also shall consider any evidence that the parent was engaging in those activities as a part of a safety plan to flee from family violence.

(b) If the court finds that there is credible evidence of a risk of abduction of the child by a parent of the child based on the court's consideration of the factors in Subsection (a), the court shall also consider evidence regarding the following factors to evaluate the risk of international abduction of the child by a parent:

(1) whether the parent has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction; and

(2) whether the parent lacks strong ties to the United States, regardless of whether the parent is a citizen or permanent resident of the United States.

(c) If the court finds that there is credible evidence of a risk of abduction of the child by a parent of the child based on the court's consideration of the factors in Subsection (a), the court may also consider evidence regarding the following factors to evaluate the risk of international abduction of the child by a parent:

(1) whether the parent is undergoing a change in status with the United States Immigration and Naturalization Service that would adversely affect that parent's ability to legally remain in the United States;

(2) whether the parent's application for United States citizenship has been denied by the United States Immigration and Naturalization Service;

(3) whether the parent has forged or presented misleading or false evidence to obtain a visa, a passport, a social security card, or any other identification card or has made any misrepresentation to the United States government; or

(4) whether the foreign country to which the parent has ties:

(A) presents obstacles to the recovery and return of a child who is abducted to the country from the United States;

(B) has any legal mechanisms for immediately and effectively enforcing an order regarding the possession of or access to the child issued by this state;

(C) has local laws or practices that would:

(i) enable the parent to prevent the child's other parent from contacting the child without due cause;

(ii) restrict the child's other parent from freely traveling to or exiting from the country because of that parent's gender, nationality, or religion; or

(iii) restrict the child's ability to legally leave the country after the child reaches the age of majority because of the child's gender, nationality, or religion;

(D) is included by the United States Department of State on a list of state sponsors of terrorism;

(E) is a country for which the United States Department of State has issued a travel warning to United States citizens regarding travel to the country;

(F) has an embassy of the United States in the country;

(G) is engaged in any active military action or war, including a civil war;

(H) is a party to and compliant with the Hague Convention on the Civil Aspects of International Child Abduction according to the most recent report on compliance issued by the United States Department of State;

(I) provides for the extradition of a parental abductor and the return of the child to the United States; or

(J) poses a risk that the child's physical health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children, including arranged marriages, lack of freedom of religion, child labor, lack of child abuse laws, female genital mutilation, and any form of slavery.

Added by Acts 2003, 78th Leg., ch. 612, Sec. 1, eff. June 20, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 13, eff. September 1, 2009.

ANNOTATIONS

In re M.M.M., 307 S.W.3d 846 (Tex. App.—Fort Worth 2010, no pet.). A child's best interest was served when a trial court appointed a child's mother sole managing conservator with no geographic restriction on the child's residence, even though the mother planned to move to California to live with her parents, because of the father's history of assaulting the mother, his failure to support the child financially or to complete a service plan, and the increased support structure in California that would enable the mother to provide better for the child's needs.

In re Sigmar, 270 S.W.3d 289 (Tex. App.—Waco 2008, orig. proceeding). A trial court did not abuse its discretion when it temporarily enjoined a father from having unsupervised access to his child, due to the risk of international abduction, when the father recently had engaged in planning activities that could facilitate the child's removal by selling an office building in Texas for $453,000 without offering any documentary evidence to support his claim that he sold the building to pay a $150,000 retainer to a law firm or to account for the remaining proceeds of the sale.

Sec. 153.503. ABDUCTION PREVENTION MEASURES

If the court finds that it is necessary under Section 153.501 to take measures to protect a child from international abduction by a parent of the child, the court may take any of the following actions:

(1) appoint a person other than the parent of the child who presents a risk of abducting the child as the sole managing conservator of the child;

(2) require supervised visitation of the parent by a visitation center or independent organization until the court finds under Section 153.501 that supervised visitation is no longer necessary;

(3) enjoin the parent or any person acting on the parent's behalf from:

(A) disrupting or removing the child from the school or child-care facility in which the child is enrolled; or

(B) approaching the child at any location other than a site designated for supervised visitation;

(4) order passport and travel controls, including controls that:

(A) prohibit the parent and any person acting on the parent's behalf from removing the child from this state or the United States;

(B) require the parent to surrender any passport issued in the child's name, including any passport issued in the name of both the parent and the child; and

(C) prohibit the parent from applying on behalf of the child for a new or replacement passport or international travel visa;

(5) require the parent to provide:

(A) to the United States Department of State's Office of Children's Issues and the relevant foreign consulate or embassy:

(i) written notice of the court-ordered passport and travel restrictions for the child; and

(ii) a properly authenticated copy of the court order detailing the restrictions and documentation of the parent's agreement to the restrictions; and

(B) to the court proof of receipt of the written notice required by Paragraph (A)(i) by the United States Department of State's Office of Children's Issues and the relevant foreign consulate or embassy;

(6) order the parent to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child is abducted by the parent to a foreign country;

(7) authorize the appropriate law enforcement agencies to take measures to prevent the abduction of the child by the parent; or

(8) include in the court's order provisions:

(A) identifying the United States as the country of habitual residence of the child;

(B) defining the basis for the court's exercise of jurisdiction; and

(C) stating that a party's violation of the order may subject the party to a civil penalty or criminal penalty or to both civil and criminal penalties.

Added by Acts 2003, 78th Leg., ch. 612, Sec. 1, eff. June 20, 2003.

ANNOTATIONS

In re Sigmar, 270 S.W.3d 289 (Tex. App.—Waco 2008, orig. proceeding). A trial court has broad discretion to determine which preventive measures to impose to prevent international child abduction pending a divorce-related matter, yet it should employ the least restrictive means available. A trial court did not abuse its discretion by issuing a temporary injunction requiring supervised visitation for a father when the court found that the father might abduct the child to Mexico; that there were obstacles to locating, recovering, and returning the parties' child to the United States were she abducted to Mexico; that there was a potential for harm to the child were she abducted to Mexico; and that it was in the child's best interest to impose an abduction prevention measure.

SUBCHAPTER J. RIGHTS OF SIBLINGS

Sec. 153.551. SUIT FOR ACCESS

(a) The sibling of a child who is separated from the child because of an action taken by the Department of Family and Protective Services may request access to the child by filing:

(1) an original suit; or

(2) a suit for modification as provided by Chapter 156.

(b) A sibling described by Subsection (a) may request access to the child in a suit filed for the sole purpose of requesting the relief, without regard to whether the appointment of a managing conservator is an issue in the suit.

(c) The court shall order reasonable access to the child by the child's sibling described by Subsection (a) if the court finds that access is in the best interest of the child.

Added by Acts 2005, 79th Leg., Ch. 1191 (H.B. 270), Sec. 2, eff. September 1, 2005. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 14, eff. September 1, 2009.

SUBCHAPTER K. PARENTING PLAN, PARENTING COORDINATOR, AND PARENTING FACILITATOR

Sec. 153.601. DEFINITIONS

In this subchapter:

(1) "Dispute resolution process" means:

(A) a process of alternative dispute resolution conducted in accordance with Section 153.0071 of this chapter and Chapter 154, Civil Practice and Remedies Code; or

(B) any other method of voluntary dispute resolution.

(2) "High-conflict case" means a suit affecting the parent-child relationship in which the court finds that the parties have demonstrated an unusual degree of:

(A) repetitiously resorting to the adjudicative process;

(B) anger and distrust; and

(C) difficulty in communicating about and cooperating in the care of their children.

(3) "Parenting coordinator" means an impartial third party:

(A) who, regardless of the title by which the person is designated by the court, performs any function described by Section 153.606 in a suit; and

(B) who:

(i) is appointed under this subchapter by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through confidential procedures; and

(ii) is not appointed under another statute or a rule of civil procedure.

(3–a) "Parenting facilitator" means an impartial third party:

(A) who, regardless of the title by which the person is designated by the court, performs any function described by Section 153.6061 in a suit; and

(B) who:

(i) is appointed under this subchapter by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through procedures that are not confidential; and

(ii) is not appointed under another statute or a rule of civil procedure.

(4) "Parenting plan" means the provisions of a final court order that:

(A) set out rights and duties of a parent or a person acting as a parent in relation to the child;

(B) provide for periods of possession of and access to the child, which may be the terms set out in the standard possession order under Subchapter F and any amendments to the standard possession order agreed to by the parties or found by the court to be in the best interest of the child;

(C) provide for child support; and

(D) optimize the development of a close and continuing relationship between each parent and the child.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 4, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 16, eff. September 1, 2009.

RESOURCES

John A. Zervopolous, *Confronting Mental Health Evidence: A Practical Guide to Reliability and Experts in Family Law*, U.T. Innovations—Breaking Boundaries in Custody Litigation (2012).

Sec. 153.602. PARENTING PLAN NOT REQUIRED IN TEMPORARY ORDER

A temporary order in a suit affecting the parent-child relationship rendered in accordance with Section 105.001 is not required to include a temporary parenting plan. The court may not require the submission of a temporary parenting plan in any case or by local rule or practice.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 4, eff. September 1, 2007.

Sec. 153.603. REQUIREMENT OF PARENTING PLAN IN FINAL ORDER

(a) Except as provided by Subsection (b), a final order in a suit affecting the parent-child relationship must include a parenting plan.

(b) The following orders are not required to include a parenting plan:

(1) an order that only modifies child support;

(2) an order that only terminates parental rights; or

(3) a final order described by Section 155.001(b).

(c) If the parties have not reached agreement on a final parenting plan on or before the 30th day before the date set for trial on the merits, a party may file with the court and serve a proposed parenting plan.

(d) This section does not preclude the parties from requesting the appointment of a parenting coordinator to resolve parental conflicts.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 4, eff. September 1, 2007.

Sec. 153.6031. EXCEPTION TO DISPUTE RESOLUTION PROCESS REQUIREMENT

A requirement in a parenting plan that a party initiate or participate in a dispute resolution process before filing a court action does not apply to an action:

(1) to modify the parenting plan in an emergency;

(2) to modify child support;

(3) alleging that the child's present circumstances will significantly impair the child's physical health or significantly impair the child's emotional development;

(4) to enforce; or

(5) in which the party shows that enforcement of the requirement is precluded or limited by Section 153.0071.

Added by Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 4, eff. September 1, 2007.

Sec. 153.605. APPOINTMENT OF PARENTING COORDINATOR

(a) In a suit affecting the parent-child relationship, the court may, on its own motion or on a motion or agreement of the parties, appoint a parenting coordinator or assign a domestic relations office under Chapter 203 to appoint an employee or other person to serve as parenting coordinator.

(b) The court may not appoint a parenting coordinator unless, after notice and hearing, the court makes a specific finding that:

(1) the case is a high-conflict case or there is good cause shown for the appointment of a parenting coordinator and the appointment is in the best interest of any minor child in the suit; and

(2) the person appointed has the minimum qualifications required by Section 153.610, as documented by the person, unless those requirements have been waived by the court with the agreement of the parties in accordance with Section 153.610(c).

(c) Notwithstanding any other provision of this subchapter, a party may at any time file a written objection to the appointment of a parenting coordinator on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, a parenting coordinator may not be appointed unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If a parenting coordinator is appointed, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order may provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during the parenting coordination.

(d) An individual appointed as a parenting coordinator may not serve in any nonconfidential capacity in the same case, including serving as an amicus attorney, guardian ad litem, child custody evaluator, or adoption evaluator under Chapter 107, as a friend of the court under Chapter 202, or as a parenting facilitator under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 5, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 17, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 3.01, eff. September 1, 2015.

Sec. 153.6051. APPOINTMENT OF PARENTING FACILITATOR

(a) In a suit affecting the parent-child relationship, the court may, on its own motion or on a motion or agreement of the parties, appoint a parenting facilitator or assign a domestic relations office under Chapter 203 to appoint an employee or other person as a parenting facilitator.

(b) The court may not appoint a parenting facilitator unless, after notice and hearing, the court makes a specific finding that:

(1) the case is a high-conflict case or there is good cause shown for the appointment of a parenting facilitator and the appointment is in the best interest of any minor child in the suit; and

(2) the person appointed has the minimum qualifications required by Section 153.6101, as documented by the person.

(c) Notwithstanding any other provision of this subchapter, a party may at any time file a written objection to the appointment of a parenting facilitator on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, a parenting facilitator may not be appointed unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If a parenting facilitator is appointed, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order may provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during the parenting facilitation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 18, eff. September 1, 2009.

Sec. 153.606. DUTIES OF PARENTING COORDINATOR

(a) The court shall specify the duties of a parenting coordinator in the order appointing the parenting coordinator. The duties of the parenting coordinator are limited to matters that will aid the parties in:

(1) identifying disputed issues;

(2) reducing misunderstandings;

(3) clarifying priorities;

(4) exploring possibilities for problem solving;

(5) developing methods of collaboration in parenting;

(6) understanding parenting plans and reaching agreements about parenting issues to be included in a parenting plan;

(7) complying with the court's order regarding conservatorship or possession of and access to the child;

(8) implementing parenting plans;

(9) obtaining training regarding problem solving, conflict management, and parenting skills; and

(10) settling disputes regarding parenting issues and reaching a proposed joint resolution or statement of intent regarding those disputes.

(b) The appointment of a parenting coordinator does not divest the court of:

(1) its exclusive jurisdiction to determine issues of conservatorship, support, and possession of and access to the child; and

(2) the authority to exercise management and control of the suit.

(c) The parenting coordinator may not modify any order, judgment, or decree.

(d) Meetings between the parenting coordinator and the parties may be informal and are not required to follow any specific procedures unless otherwise provided by this subchapter.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1181, Sec. 11(2), eff. September 1, 2007.

(f) A parenting coordinator appointed under this subchapter shall comply with the Ethical Guidelines for Mediators as adopted by the Supreme Court of Texas (Misc. Docket No. 05-9107, June 13, 2005). On request by the court, the parties, or the parties' attorneys, the parenting coordinator shall sign a statement of agreement to comply with those guidelines and submit the statement to the court on acceptance of the appointment. A failure to comply with the guidelines is grounds for removal of the parenting coordinator.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 6, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 7, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 11(2), eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 19, eff. September 1, 2009.

Sec. 153.6061. DUTIES OF PARENTING FACILITATOR

(a) The court shall specify the duties of a parenting facilitator in the order appointing the parenting facilitator. The duties of the parenting facilitator are limited to those matters described with regard to a parenting coordinator under Section 153.606(a), except that the parenting facilitator may also monitor compliance with court orders.

(b) A parenting facilitator appointed under this subchapter shall comply with the standard of care applicable to the professional license held by the parenting facilitator in performing the parenting facilitator's duties.

(c) The appointment of a parenting facilitator does not divest the court of:

(1) the exclusive jurisdiction to determine issues of conservatorship, support, and possession of and access to the child; and

(2) the authority to exercise management and control of the suit.

(d) The parenting facilitator may not modify any order, judgment, or decree.

(e) Meetings between the parenting facilitator and the parties may be informal and are not required to follow any specific procedures unless otherwise provided by this subchapter or the standards of practice of the professional license held by the parenting facilitator.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 20, eff. September 1, 2009.

Sec. 153.607. PRESUMPTION OF GOOD FAITH; REMOVAL OF PARENTING COORDINATOR

(a) It is a rebuttable presumption that a parenting coordinator is acting in good faith if the parenting coordinator's services have been conducted as provided by this subchapter and the Ethical Guidelines for Mediators described by Section 153.606(f).

(a–1) Except as otherwise provided by this section, the court may remove the parenting coordinator in the court's discretion.

(b) The court shall remove the parenting coordinator:

(1) on the request and agreement of all parties;

(2) on the request of the parenting coordinator;

(3) on the motion of a party, if good cause is shown; or

(4) if the parenting coordinator ceases to satisfy the minimum qualifications required by Section 153.610.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 8, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 21, eff. September 1, 2009.

Sec. 153.6071. PRESUMPTION OF GOOD FAITH; REMOVAL OF PARENTING FACILITATOR

(a) It is a rebuttable presumption that a parenting facilitator is acting in good faith if the parenting facilitator's services have been conducted as provided by this subchapter and the standard of care applicable to the professional license held by the parenting facilitator.

(b) Except as otherwise provided by this section, the court may remove the parenting facilitator in the court's discretion.

(c) The court shall remove the parenting facilitator:

(1) on the request and agreement of all parties;

(2) on the request of the parenting facilitator;

(3) on the motion of a party, if good cause is shown; or

(4) if the parenting facilitator ceases to satisfy the minimum qualifications required by Section 153.6101.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 22, eff. September 1, 2009.

Sec. 153.608. Report of Parenting Coordinator

A parenting coordinator shall submit a written report to the court and to the parties as often as ordered by the court. The report must be limited to a statement of whether the parenting coordination should continue.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 9, eff. September 1, 2007.

Sec. 153.6081. Report of Parenting Facilitator

A parenting facilitator shall submit a written report to the court and to the parties as ordered by the court. The report may include a recommendation described by Section 153.6082(e) and any other information required by the court, except that the report may not include recommendations regarding the conservatorship of or the possession of or access to the child who is the subject of the suit.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 22, eff. September 1, 2009.

ANNOTATIONS

Gadekar v. Zankar, No. 12-16-00209-CV, 2018 WL 2440393 (Tex. App.—Tyler May 31, 2018, no pet.) (mem. op.). The parenting facilitator's report may not include recommendations regarding the conservatorship of or the possession of or access to the child who is the subject of the suit.

Sec. 153.6082. Report of Joint Proposal or Statement of Intent; Agreements and Recommendations

(a) If the parties have been ordered by the court to attempt to settle parenting issues with the assistance of a parenting coordinator or parenting facilitator and to attempt to reach a proposed joint resolution or statement of intent regarding the dispute, the parenting coordinator or parenting facilitator, as applicable, shall submit a written report describing the parties' joint proposal or statement to the parties, any attorneys for the parties, and any attorney for the child who is the subject of the suit.

(b) The proposed joint resolution or statement of intent is not an agreement unless the resolution or statement is:

(1) prepared by the parties' attorneys, if any, in a form that meets the applicable requirements of:

(A) Rule 11, Texas Rules of Civil Procedure;

(B) a mediated settlement agreement described by Section 153.0071;

(C) a collaborative law agreement described by Section 153.0072;

(D) a settlement agreement described by Section 154.071, Civil Practice and Remedies Code; or

(E) a proposed court order; and

(2) incorporated into an order signed by the court.

(c) A parenting coordinator or parenting facilitator may not draft a document listed in Subsection (b)(1).

(d) The actions of a parenting coordinator or parenting facilitator under this section do not constitute the practice of law.

(e) If the parties have been ordered by the court to attempt to settle parenting issues with the assistance of a parenting facilitator and are unable to settle those issues, the parenting facilitator may make recommendations, other than recommendations regarding the conservatorship of or possession of or access to the child, to the parties and attorneys to implement or clarify provisions of an existing court order that are consistent with the substantive intent of the court order and in the best interest of the child who is the subject of the suit. A recommendation authorized by this subsection does not affect the terms of an existing court order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 22, eff. September 1, 2009.

Sec. 153.6083. COMMUNICATIONS AND RECORDKEEPING OF PARENTING FACILITATOR

(a) Notwithstanding any rule, standard of care, or privilege applicable to the professional license held by a parenting facilitator, a communication made by a participant in parenting facilitation is subject to disclosure and may be offered in any judicial or administrative proceeding, if otherwise admissible under the rules of evidence. The parenting facilitator may be required to testify in any proceeding relating to or arising from the duties of the parenting facilitator, including as to the basis for any recommendation made to the parties that arises from the duties of the parenting facilitator.

(b) A parenting facilitator shall keep a detailed record regarding meetings and contacts with the parties, attorneys, or other persons involved in the suit.

(c) A person who participates in parenting facilitation is not a patient as defined by Section 611.001, Health and Safety Code, and no record created as part of the parenting facilitation that arises from the parenting facilitator's duties is confidential.

(d) On request, records of parenting facilitation shall be made available by the parenting facilitator to an attorney for a party, an attorney for a child who is the subject of the suit, and a party who does not have an attorney.

(e) A parenting facilitator shall keep parenting facilitation records from the suit until the seventh anniversary of the date the facilitator's services are terminated, unless a different retention period is established by a rule adopted by the licensing authority that issues the professional license held by the parenting facilitator.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 22, eff. September 1, 2009.

Sec. 153.609. COMPENSATION OF PARENTING COORDINATOR

(a) A court may not appoint a parenting coordinator, other than a domestic relations office or a comparable county agency appointed under Subsection (c) or a volunteer appointed under Subsection (d), unless, after notice and hearing, the court finds that the parties have the means to pay the fees of the parenting coordinator.

(b) Any fees of a parenting coordinator appointed under Subsection (a) shall be allocated between the parties as determined by the court.

(c) Public funds may not be used to pay the fees of a parenting coordinator. Notwithstanding this prohibition, a court may appoint the domestic relations office or a comparable county agency to act as a parenting coordinator if personnel are available to serve that function.

(d) If due to hardship the parties are unable to pay the fees of a parenting coordinator, and a domestic relations office or a comparable county agency is not available under Subsection (c), the court, if feasible, may appoint a person who meets the minimum qualifications prescribed by Section 153.610, including an employee of the court, to act as a parenting coordinator on a volunteer basis and without compensation.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1181 (H.B. 555), Sec. 10, eff. September 1, 2007. Acts 2011, 82nd Leg., R.S., Ch. 682 (H.B. 149), Sec. 1, eff. June 17, 2011.

Sec. 153.6091. COMPENSATION OF PARENTING FACILITATOR

Section 153.609 applies to a parenting facilitator in the same manner as provided for a parenting coordinator, except that a person appointed in accordance with Section 153.609(d) to act as a parenting facilitator must meet the minimum qualifications prescribed by Section 153.6101.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 22, eff. September 1, 2009. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 682 (H.B. 149), Sec. 2, eff. June 17, 2011.

Sec. 153.610. QUALIFICATIONS OF PARENTING COORDINATOR

(a) The court shall determine the required qualifications of a parenting coordinator, provided that a parenting coordinator must have experience working in a field relating to families, have practical experience with high-conflict cases or litigation between parents, and:

(1) hold at least:

(A) a bachelor's degree in counseling, education, family studies, psychology, or social work; or

(B) a graduate degree in a mental health profession, with an emphasis in family and children's issues; or

(2) be licensed in good standing as an attorney in this state.

(b) In addition to the qualifications prescribed by Subsection (a), a parenting coordinator must complete at least:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court; and

(3) 24 classroom hours of training in the fields of family dynamics, child development, family law and the law governing parenting coordination, and parenting coordination styles and procedures.

(c) In appropriate circumstances, a court may, with the agreement of the parties, appoint a person as parenting coordinator who does not satisfy the requirements of Subsection (a) or Subsection (b)(2) or (3) if the court finds that the person has sufficient legal or other professional training or experience in dispute resolution processes to serve in that capacity.

(d) The actions of a parenting coordinator who is not an attorney do not constitute the practice of law.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 23, eff. September 1, 2009.

Sec. 153.6101. QUALIFICATIONS OF PARENTING FACILITATOR

(a) The court shall determine whether the qualifications of a proposed parenting facilitator satisfy the requirements of this section. On request by a party, an attorney for a party, or any attorney for a child who is the subject of the suit, a person under consideration for appointment as a parenting facilitator in the suit shall provide proof that the person satisfies the minimum qualifications required by this section.

(b) A parenting facilitator must:

(1) hold a license to practice in this state as a social worker, licensed professional counselor, licensed marriage and family therapist, psychologist, or attorney; and

(2) have completed at least:

(A) eight hours of family violence dynamics training provided by a family violence service provider;

(B) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(C) 24 classroom hours of training in the fields of family dynamics, child development, and family law; and

(D) 16 hours of training in the laws governing parenting coordination and parenting facilitation and the multiple styles and procedures used in different models of service.

(c) The actions of a parenting facilitator who is not an attorney do not constitute the practice of law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 24, eff. September 1, 2009.

Sec. 153.6102. PARENTING FACILITATOR; CONFLICTS OF INTEREST AND BIAS

(a) A person who has a conflict of interest with, or has previous knowledge of, a party or a child who is the subject of a suit must, before being appointed as parenting facilitator in a suit:

(1) disclose the conflict or previous knowledge to the court, each attorney for a party, any attorney for a child, and any party who does not have an attorney; and

(2) decline appointment in the suit unless, after the disclosure, the parties and the child's attorney, if any, agree in writing to the person's appointment as parenting facilitator.

(b) A parenting facilitator who, after being appointed in a suit, discovers that the parenting facilitator has a conflict of interest with, or has previous knowledge of, a party or a child who is the subject of the suit shall:

(1) immediately disclose the conflict or previous knowledge to the court, each attorney for a party, any attorney for a child, and any party who does not have an attorney; and

(2) withdraw from the suit unless, after the disclosure, the parties and the child's attorney, if any, agree in writing to the person's continuation as parenting facilitator.

(c) A parenting facilitator, before accepting appointment in a suit, must disclose to the court, each attorney for a party, any attorney for a child who is the subject of the suit, and any party who does not have an attorney:

(1) a pecuniary relationship with an attorney, party, or child in the suit;

(2) a relationship of confidence or trust with an attorney, party, or child in the suit; and

(3) other information regarding any relationship with an attorney, party, or child in the suit that might reasonably affect the ability of the person to act impartially during the person's service as parenting facilitator.

(d) A person who makes a disclosure required by Subsection (c) shall decline appointment as parenting facilitator unless, after the disclosure, the parties and the child's attorney, if any, agree in writing to the person's service as parenting facilitator in the suit.

(e) A parenting facilitator may not serve in any other professional capacity at any other time with any person who is a party to, or the subject of, the suit in which the person serves as parenting facilitator, or with any member of the family of a party or subject. A person who, before appointment as a parenting facilitator in a suit, served in any other professional capacity with a person who is a party to, or subject of, the suit, or with any member of the family of a party or subject, may not serve as parenting facilitator in a suit involving any family member who is a party to or subject of the suit. This subsection does not apply to a person whose only other service in a professional capacity with a family or any member of a family that is a party to or the subject of a suit to which this section applies is as a teacher of coparenting skills in a class conducted in a group setting. For purposes of this subsection, "family" has the meaning assigned by Section 71.003.

(f) A parenting facilitator shall promptly and simultaneously disclose to each party's attorney, any attorney for a child who is a subject of the suit, and any party who does not have an attorney the existence and substance of any communication between the parenting facilitator and another person, including a party, a party's attorney, a child who is the subject of the suit, and any attorney for a child who is the subject of the suit, if the communication occurred outside of a parenting facilitator session and involved the substance of parenting facilitation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 24, eff. September 1, 2009.

Sec. 153.611. Exception for Certain Title IV-D Proceedings

Notwithstanding any other provision of this subchapter, this subchapter does not apply to a proceeding in a Title IV-D case relating to the determination of parentage or establishment, modification, or enforcement of a child support, medical support, or dental support obligation.

Added by Acts 2005, 79th Leg., Ch. 482 (H.B. 252), Sec. 2, eff. September 1, 2005. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 7, eff. September 1, 2018.

SUBCHAPTER L. MILITARY DUTY

Sec. 153.701. Definitions

In this subchapter:

(1) "Designated person" means the person ordered by the court to temporarily exercise a conservator's rights, duties, and periods of possession and access with regard to a child during the conservator's military deployment, military mobilization, or temporary military duty.

(2) "Military deployment" means the temporary transfer of a service member of the armed forces of this state or the United States serving in an active-duty status to another location in support of combat or some other military operation.

(3) "Military mobilization" means the call-up of a National Guard or Reserve service member of the armed forces of this state or the United States to extended active duty status. The term does not include National Guard or Reserve annual training.

(4) "Temporary military duty" means the transfer of a service member of the armed forces of this state or the United States from one military base to a different location, usually another base, for a limited time for training or to assist in the performance of a noncombat mission.

Added by Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 1, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 25, eff. September 1, 2009.

RESOURCES

David D. Farr, *Special Problems for Military Families*, Adv. Fam. L. (2011).

Meca L. Walker, *Military Visitation and Conservatorship Issues*, Adv. Fam. L. (2011).

Sec. 153.702. TEMPORARY ORDERS

(a) If a conservator is ordered to military deployment, military mobilization, or temporary military duty that involves moving a substantial distance from the conservator's residence so as to materially affect the conservator's ability to exercise the conservator's rights and duties in relation to a child, either conservator may file for an order under this subchapter without the necessity of showing a material and substantial change of circumstances other than the military deployment, military mobilization, or temporary military duty.

(b) The court may render a temporary order in a proceeding under this subchapter regarding:

(1) possession of or access to the child; or

(2) child support.

(c) A temporary order rendered by the court under this subchapter may grant rights to and impose duties on a designated person regarding the child, except that if the designated person is a nonparent, the court may not require the designated person to pay child support.

(d) After a conservator's military deployment, military mobilization, or temporary military duty is concluded, and the conservator returns to the conservator's usual residence, the temporary orders under this section terminate and the rights of all affected parties are governed by the terms of any court order applicable when the conservator is not ordered to military deployment, military mobilization, or temporary military duty.

Added by Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 1, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 25, eff. September 1, 2009. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 112 (H.B. 1404), Sec. 1, eff. September 1, 2011.

Sec. 153.703. APPOINTING DESIGNATED PERSON FOR CONSERVATOR WITH EXCLUSIVE RIGHT TO DESIGNATE PRIMARY RESIDENCE OF CHILD

(a) If the conservator with the exclusive right to designate the primary residence of the child is ordered to military deployment, military mobilization, or temporary military duty, the court may render a temporary order to appoint a designated person to exercise the exclusive right to designate the primary residence of the child during the military deployment, military mobilization, or temporary military duty in the following order of preference:

(1) the conservator who does not have the exclusive right to designate the primary residence of the child;

(2) if appointing the conservator described by Subdivision (1) is not in the child's best interest, a designated person chosen by the conservator with the exclusive right to designate the primary residence of the child; or

(3) if appointing the conservator described by Subdivision (1) or the person chosen under Subdivision (2) is not in the child's best interest, another person chosen by the court.

(b) A nonparent appointed as a designated person in a temporary order rendered under this section has the rights and duties of a nonparent appointed as sole managing conservator under Section 153.371.

(c) The court may limit or expand the rights of a nonparent named as a designated person in a temporary order rendered under this section as appropriate to the best interest of the child.

Added by Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 1, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 25, eff. September 1, 2009. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 112 (H.B. 1404), Sec. 2, eff. September 1, 2011.

Sec. 153.704. APPOINTING DESIGNATED PERSON TO EXERCISE VISITATION FOR CONSERVATOR WITH EXCLUSIVE RIGHT TO DESIGNATE PRIMARY RESIDENCE OF CHILD IN CERTAIN CIRCUMSTANCES

(a) If the court appoints the conservator without the exclusive right to designate the primary residence of the child under Section 153.703(a)(1), the court may award visitation with the child to a designated person chosen by the conservator with the exclusive right to designate the primary residence of the child.

(b) The periods of visitation shall be the same as the visitation to which the conservator without the exclusive right to designate the primary residence of the child was entitled under the court order in effect immediately before the date the temporary order is rendered.

(c) The temporary order for visitation must provide that:

(1) the designated person under this section has the right to possession of the child for the periods and in the manner in which the conservator without the exclusive right to designate the primary residence of the child is entitled under the court order in effect immediately before the date the temporary order is rendered;

(2) the child's other conservator and the designated person under this section are subject to the requirements of Section 153.316, with the designated person considered for purposes of that section to be the possessory conservator;

(3) the designated person under this section has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the person has possession of the child; and

(4) the designated person under this section is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.

(d) The court may limit or expand the rights of a nonparent designated person named in a temporary order rendered under this section as appropriate to the best interest of the child.

Added by Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 1, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 25, eff. September 1, 2009.

Sec. 153.705. APPOINTING DESIGNATED PERSON TO EXERCISE VISITATION FOR CONSERVATOR WITHOUT EXCLUSIVE RIGHT TO DESIGNATE PRIMARY RESIDENCE OF CHILD

(a) If the conservator without the exclusive right to designate the primary residence of the child is ordered to military deployment, military mobilization, or temporary military duty, the court may award visitation with the child to a designated person chosen by the conservator, if the visitation is in the best interest of the child.

(b) The temporary order for visitation must provide that:

(1) the designated person under this section has the right to possession of the child for the periods and in the manner in which the conservator described by Subsection (a) would be entitled if not ordered to military deployment, military mobilization, or temporary military duty;

(2) the child's other conservator and the designated person under this section are subject to the requirements of Section 153.316, with the designated person considered for purposes of that section to be the possessory conservator;

(3) the designated person under this section has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the designated person has possession of the child; and

(4) the designated person under this section is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.

(c) The court may limit or expand the rights of a nonparent designated person named in a temporary order rendered under this section as appropriate to the best interest of the child.

Added by Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 1, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 25, eff. September 1, 2009.

Sec. 153.707. EXPEDITED HEARING

(a) On a motion by the conservator who has been ordered to military deployment, military mobilization, or temporary military duty, the court shall, for good cause shown, hold an expedited hearing if the court finds that the conservator's military duties have a material effect on the conservator's ability to appear in person at a regularly scheduled hearing.

(b) A hearing under this section shall, if possible, take precedence over other suits affecting the parent-child relationship not involving a conservator who has been ordered to military deployment, military mobilization, or temporary military duty.

(c) On a motion by any party, the court shall, after reasonable advance notice and for good cause shown, allow a party to present testimony and evidence by electronic means, including by teleconference or through the Internet.

Added by Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 1, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 25, eff. September 1, 2009.

Sec. 153.708. ENFORCEMENT

Temporary orders rendered under this subchapter may be enforced by or against the designated person to the same extent that an order would be enforceable against the conservator who has been ordered to military deployment, military mobilization, or temporary military duty.

Added by Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 1, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 25, eff. September 1, 2009.

Sec. 153.709. ADDITIONAL PERIODS OF POSSESSION OR ACCESS

(a) Not later than the 90th day after the date a conservator without the exclusive right to designate the primary residence of the child who is a member of the armed services concludes the conservator's military deployment, military mobilization, or temporary military duty, the conservator may petition the court to:

(1) compute the periods of possession of or access to the child to which the conservator would have otherwise been entitled during the conservator's deployment; and

(2) award the conservator additional periods of possession of or access to the child to compensate for the periods described by Subdivision (1).

(b) If the conservator described by Subsection (a) petitions the court under Subsection (a), the court:

(1) shall compute the periods of possession or access to the child described by Subsection (a)(1); and

(2) may award to the conservator additional periods of possession of or access to the child for a length of time and under terms the court considers reasonable, if the court determines that:

(A) the conservator was on military deployment, military mobilization, or temporary military duty in a location where access to the child was not reasonably possible; and

(B) the award of additional periods of possession of or access to the child is in the best interest of the child.

(c) In making the determination under Subsection (b)(2), the court:

(1) shall consider:

(A) the periods of possession of or access to the child to which the conservator would otherwise have been entitled during the conservator's military deployment, mili-

tary mobilization, or temporary military duty, as computed under Subsection (b)(1);

(B) whether the court named a designated person under Section 153.705 to exercise limited possession of the child during the conservator's deployment; and

(C) any other factor the court considers appropriate; and

(2) is not required to award additional periods of possession of or access to the child that equals the possession or access to which the conservator would have been entitled during the conservator's military deployment, military mobilization, or temporary military duty, as computed under Subsection (b)(1).

(d) After the conservator described by Subsection (a) has exercised all additional periods of possession or access awarded under this section, the rights of all affected parties are governed by the terms of the court order applicable when the conservator is not ordered to military deployment, military mobilization, or temporary military duty.

Added by Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 1, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 25, eff. September 1, 2009.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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COMMENTS

Child support is calculated by applying a percentage to an obligor's net resources up to a certain amount. If there are additional net resources above the "cap," a trial court has discretion to order additional child support depending on the income of the parties and the proven needs of the child.

The cap began at $4,000 in 1987. In 1993, it rose to $6,000. In 2007, the legislature raised the cap to $7,500. The legislature also provided, in section 154.125, a mechanism to raise the cap based on inflation. Under section 154.125, the net resources cap increased from $7,500 to $8,550 effective September 1, 2013.

SUBCHAPTER A. COURT-ORDERED CHILD SUPPORT

Sec. 154.001. SUPPORT OF CHILD

(a) The court may order either or both parents to support a child in the manner specified by the order:

(1) until the child is 18 years of age or until graduation from high school, whichever occurs later;

(2) until the child is emancipated through marriage, through removal of the disabilities of minority by court order, or by other operation of law;

(3) until the death of the child; or

(4) if the child is disabled as defined in this chapter, for an indefinite period.

(a–1) The court may order each person who is financially able and whose parental rights have been terminated with respect to a child in substitute care for whom the department has been appointed managing conservator, a child for a reason described by Section 161.001(b)(1)(T)(iv) or (b)(1)(U), or a child who was conceived as a direct result of conduct that constitutes an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code, to support the child in the manner specified by the order:

(1) until the earliest of:

(A) the child's adoption;

(B) the child's 18th birthday or graduation from high school, whichever occurs later;

(C) removal of the child's disabilities of minority by court order, marriage, or other operation of law; or

(D) the child's death; or

(2) if the child is disabled as defined in this chapter, for an indefinite period.

(b) The court may order either or both parents to make periodic payments for the support of a child in a proceeding in which the Department of Protective and Regulatory Services is named temporary managing conservator. In a proceeding in which the Department of Protective and Regulatory Services is named permanent managing conservator of a child whose parents' rights have not been terminated, the court shall order each parent that is financially able to make periodic payments for the support of the child.

(c) In a Title IV-D case, if neither parent has physical possession or conservatorship of the child, the court may render an order providing that a nonparent or agency having physical possession may receive, hold, or disburse child support payments for the benefit of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 39, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 556, Sec. 8, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.08(a), eff. September 1, 2005. Acts 2013, 83rd Leg., R.S., Ch. 907 (H.B. 1228), Sec. 3, eff. September 1, 2013. Acts 2017, 85th Leg., R.S., Ch. 40 (S.B. 77), Sec. 1, eff. Sept. 1, 2017.

COMMENTS

This section specifically sets forth the time for which either or both parents may be obligated to support the child, even if a parent's rights have been terminated.

A child support obligation may be indefinite if the court finds the child the subject of the suit is disabled.

ANNOTATIONS

In re D.C., 549 S.W.3d 136 (Tex. 2018). The Texas Supreme Court denied the petition for review of an order that required a parent to pay child support for an adult child indefinitely. The adult son had attained the age of majority, lived on his own in a dormitory, had graduated from college with a double major, and had begun pursuing a master's degree. In an opinion concurring in the denial of the petition for review, Justice Guzman noted that the Family Code does not define "mental or physical disability or specify the type of proof required to meet the statutory standard" and stated that the supreme court "should, in an appropriate case, give the lower courts guidance regarding how 'detailed and specific' the evidence must be to meet section 154.302's standards."

Bruni v. Bruni, 924 S.W.2d 366 (Tex. 1996). The Family Code formerly authorized a trial court to order support until a child turned eighteen. However, the parties could execute an agreement for support of the child beyond eighteen if the agreement provided that it would be enforceable in contract.

Rodriguez v. Rodriguez, 860 S.W.2d 414 (Tex. 1993). A trial court has wide discretion to set child support within the bounds set by statute. A trial court's order of child support will be overturned on appeal only if the trial court abused its discretion.

In re D.B., No. 07-16-00359-CV, 2017 WL 4563996 (Tex. App.—Amarillo Oct. 11, 2017, no pet.) (mem. op.). Section 154.001(a) states that a court "may" order child support, but it is not required to do so when, as here, possession times were equal, the father was unemployed because of a temporary physical disability, and he was obligated to support another child.

In re A.J.L., 108 S.W.3d 414 (Tex. App.—Fort Worth 2003, pet. denied). A trial court may order child support only if it determines that a parent-child relationship exists.

In re Frost, 815 S.W.2d 890 (Tex. App.—Amarillo 1991, no writ). A trial court may order a parent to continue paying child support for a child beyond age eighteen even if the child is enrolled in an unaccredited program, as long as the program will award the child a high school diploma or equivalent degree.

RESOURCES

Bruce D. Bain, *Child Support: Statutory and Contractual*, Marriage Dissolution (2012).

Cynthia Barela Graham & April Palmer, *Navigating the Attorney General Maze*, U.T. Fam. L. Front Lines (2008).

Patricia N. Carter, *Creative Child Support Orders and Settlements*, Collaborative Law (2011).

Katherine A. Kinser & Lauren E. Melhart, *Pursue and Defend a Child Support Case*, Family Law 101 (2016).

Keith D. Maples & Pi-Yi Mayo, *Child Support for Children with Disabilities*, Adv. Fam. L. (2010).

Kristal C. Thomson & Tifini Cigarroa, *Child Support: Coloring Outside of the Lines*, Marriage Dissolution (2017).

Sara S. Valentine & Loren A. Canales, *Let the CHIP Fall Where It May: Child, Medical, and Dental Support Obligations as Health Insurance Faces the Ax*, Marriage Dissolution (2018).

Sec. 154.002. CHILD SUPPORT THROUGH HIGH SCHOOL GRADUATION

(a) The court may render an original support order, or modify an existing order, providing child support past the 18th birthday of the child to be paid only if the child is:

(1) enrolled:

(A) under Chapter 25, Education Code, in an accredited secondary school in a program leading toward a high school diploma;

(B) under Section 130.008, Education Code, in courses for joint high school and junior college credit; or

(C) on a full-time basis in a private secondary school in a program leading toward a high school diploma; and

(2) complying with:

(A) the minimum attendance requirements of Subchapter C, Chapter 25, Education Code; or

(B) the minimum attendance requirements imposed by the school in which the child is enrolled, if the child is enrolled in a private secondary school.

(b) The request for a support order through high school graduation may be filed before or after the child's 18th birthday.

(c) The order for periodic support may provide that payments continue through the end of the month in which the child graduates.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 506, Sec. 1, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 38, Sec. 1, eff. Sept. 1, 2003.

COMMENTS

The intent of this section is to require parents to provide support for their children, even beyond the age of eighteen years, as long as the child is pursuing a high school diploma or the equivalent.

ANNOTATIONS

In re J.R.G., No. 11-17-00205-CV, 2018 WL 3384596 (Tex. App.—Eastland July 12, 2018, no pet.) (mem. op.). The trial court did not abuse its discretion in terminating father's child support obligation where mother failed to provide accurate proof that the child was enrolled full-time in a program leading toward a high school diploma and that the child was meeting the minimum attendance requirements.

In re J.A.B., 13 S.W.3d 813 (Tex. App.—Fort Worth 2000, no pet.). "Full enrollment" does not mean that the child must be participating in high school or its equivalent. Further, the mere fact that a child may not pass or has accumulated too many absences and will not receive enough credits to graduate does not determine "full enrollment." Instead, "full enrollment" requires that the child's name appear on the rolls of the school district, that the child be registered for the normal number of classes, and that the child has not been withdrawn or expelled from school.

Crocker v. Attorney General of Texas, 3 S.W.3d 650 (Tex. App.—Austin 1999, no pet.). The overriding legislative concern behind a trial court's ability to order an obligor to pay child support after a child turns eighteen is to support the child through a program leading toward a high school degree. Further, a court analyzes "full enrollment" for purposes of this section on the basis of the total number of hours the child would be required to take to seek graduation and not the actual hours the child is currently taking.

RESOURCES

Bruce D. Bain, *Child Support: Statutory and Contractual*, Marriage Dissolution (2012).

Jack W. Marr, *Creative Approaches to Child Support*, Adv. Fam. L. (2010).

Sec. 154.003. MANNER OF PAYMENT

The court may order that child support be paid by:

(1) periodic payments;

(2) a lump-sum payment;

(3) an annuity purchase;

(4) the setting aside of property to be administered for the support of the child as specified in the order; or

(5) any combination of periodic payments, lump-sum payments, annuity purchases, or setting aside of property.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Eggemeyer v. Eggemeyer, 554 S.W.2d 137 (Tex. 1977). A trial court may set aside either parent's separate property for the payment of child support, including, but not limited to, property, rents, revenues, and income from separate property.

Ex parte Dean, 529 S.W.2d 585 (Tex. Civ. App.—Houston [1st Dist.] 1975, no pet.). In cases involving more than one minor child, a trial court has the discretion to award child support in a lump sum without specifying the percentage apportioned to each child.

RESOURCES

Patricia N. Carter, *Creative Child Support Orders and Settlements*, Collaborative Law (2011).

Jack W. Marr, *Creative Approaches to Child Support*, Adv. Fam. L. (2010).

Sec. 154.004. PLACE OF PAYMENT

(a) The court shall order the payment of child support to the state disbursement unit as provided by Chapter 234.

(b) In a Title IV-D case, the court or the Title IV-D agency shall order that income withheld for child support be paid to the state disbursement unit of this state or, if appropriate, to the state disbursement unit of another state.

(c) This section does not apply to a child support order that:

(1) was initially rendered by a court before January 1, 1994; and

(2) is not being enforced by the Title IV-D agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 9, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1247, Sec. 1, eff. Sept. 1, 2003.

RESOURCES

Alicia G. Key, *The Attorney General's Child Support Division*, Adv. Fam. L. Drafting (2010).

Sec. 154.005. PAYMENTS OF SUPPORT OBLIGATION BY TRUST

(a) The court may order the trustees of a spendthrift or other trust to make disbursements for the support of a child to the extent the trustees are required to make payments to a beneficiary who is required to make child support payments as provided by this chapter.

(b) If disbursement of the assets of the trust is discretionary, the court may order child support payments from the income of the trust but not from the principal.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Kolpack v. Torres, 829 S.W.2d 913 (Tex. App.—Corpus Christi 1992, writ denied). A trial court may not order the trustee of a discretionary trust to make disbursements to a child support obligee without the beneficiary-parent first being obligated to the amount of child support.

Prewitt v. Smith, 528 S.W.2d 893 (Tex. Civ. App.—Austin 1975, no writ). This section, previously section 14.05(c), does not apply to funds of public retirement systems that are held by state officials for the benefit of the members of those systems.

Sec. 154.006. TERMINATION OF DUTY OF SUPPORT

(a) Unless otherwise agreed in writing or expressly provided in the order or as provided by Subsection (b), the child support order terminates on:

(1) the marriage of the child;

(2) the removal of the child's disabilities for general purposes;

(3) the death of the child;

(4) a finding by a court that the child:

(A) is 18 years of age or older; and

(B) has failed to comply with the enrollment or attendance requirements described by Section 154.002(a);

(5) the issuance under Section 161.005(h) of an order terminating the parent-child relationship between the obligor and the child based on the results of genetic testing that exclude the obligor as the child's genetic father; or

(6) if the child enlists in the armed forces of the United States, the date on which the child begins active service as defined by 10 U.S.C. Section 101.

(b) Unless a nonparent or agency has been appointed conservator of the child under Chapter 153, the order for current child support, and any provision relating to conservatorship, possession, or access terminates on the marriage or remarriage of the obligor and obligee to each other.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 9, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 38, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 9(a), eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1404 (S.B. 617), Sec. 1, eff. September 1, 2007. Acts 2011, 82nd Leg., R.S., Ch. 54 (S.B. 785), Sec. 1, eff. May 12, 2011.

ANNOTATIONS

In re J.R.G., No. 11-17-00205-CV, 2018 WL 3384596 (Tex. App.—Eastland July 12, 2018, no pet.) (mem. op.). The trial court did not abuse its discretion in terminating father's child support obligation where mother failed to provide accurate proof that the child was enrolled full-time in a program leading toward a high school diploma and that the child was meeting the minimum attendance requirements.

Deltuva v. Deltuva, 113 S.W.3d 882 (Tex. App.—Dallas 2003, no pet.). The failure to provide for the reduction of child support as a child reaches the age of eighteen constitutes reversible error.

Laird v. Swor, 737 S.W.2d 601 (Tex. App.—Beaumont 1987, no writ). Unless otherwise agreed in writing, the divorce of a child under the age of eighteen years does not reinstate a parent's obligation to pay child support.

Fernandez v. Fernandez, 717 S.W.2d 781 (Tex. App.—El Paso 1986, writ dism'd). A child's annulment of marriage, when the child is under the age of eighteen, reinstates a parent's obligation to pay child support.

RESOURCES

Keith D. Maples & Pi-Yi Mayo, *Child Support for Children with Disabilities*, Adv. Fam. L. (2010).

Sec. 154.007. ORDER TO WITHHOLD CHILD SUPPORT FROM INCOME

(a) In a proceeding in which periodic payments of child support are ordered, modified, or enforced, the court or Title IV-D agency shall order that income be withheld from the disposable earnings of the obligor as provided by Chapter 158.

(b) If the court does not order income withholding, an order for support must contain a provision for income withholding to ensure that withholding may be effected if a delinquency occurs.

(c) A child support order must be construed to contain a withholding provision even if the provision has been omitted from the written order.

(d) If the order was rendered or last modified before January 1, 1987, the order is presumed to contain a provision for income withholding procedures to take effect in the event a delinquency occurs without further amendment to the order or future action by the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 10, eff. Sept. 1, 1997.

Sec. 154.008. PROVISION FOR MEDICAL SUPPORT AND DENTAL SUPPORT

The court shall order medical support and dental support for the child as provided by Subchapters B and D.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 3, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 8, eff. September 1, 2018.

RESOURCES

Sara S. Valentine & Loren A. Canales, *Let the CHIP Fall Where It May: Child, Medical, and Dental Support Obligations as Health Insurance Faces the Ax*, Marriage Dissolution (2018).

Sec. 154.009. RETROACTIVE CHILD SUPPORT

(a) The court may order a parent to pay retroactive child support if the parent:

(1) has not previously been ordered to pay support for the child; and

(2) was not a party to a suit in which support was ordered.

(b) In ordering retroactive child support, the court shall apply the child support guidelines provided by this chapter.

(c) Unless the Title IV-D agency is a party to an agreement concerning support or purporting to settle past, present, or future support obligations by prepayment or otherwise, an agreement between the parties does not reduce or terminate retroactive support that the agency may request.

(d) Notwithstanding Subsection (a), the court may order a parent subject to a previous child support order to pay retroactive child support if:

(1) the previous child support order terminated as a result of the marriage or remarriage of the child's parents;

(2) the child's parents separated after the marriage or remarriage; and

(3) a new child support order is sought after the date of the separation.

(e) In rendering an order under Subsection (d), the court may order retroactive child support back to the date of the separation of the child's parents.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 4, eff. Sept. 1, 2001.

ANNOTATIONS

In re A.M., No. 04-16-00335-CV, 2017 WL 1337648 (Tex. App.—San Antonio Apr. 12, 2017, no pet.) (mem. op.). Subsection 154.009(a) does not preclude a trial court from ordering retroactive child support when temporary orders required the payment of child support.

In re Sanders, 159 S.W.3d 797 (Tex. App.—Amarillo 2005, no pet.). Retroactive child support must be based upon the application of the child support guidelines to the net income during the time period for which retroactive child support is being awarded.

Garza v. Blanton, 55 S.W.3d 708 (Tex. App.—Corpus Christi 2001, no pet.). Retroactive child support is not mandated by statute when paternity is established. Instead, retroactive support is left to a factual determination by the trial court.

RESOURCES

Bruce D. Bain, *Child Support: Statutory and Contractual*, Marriage Dissolution (2012).

Patricia N. Carter, *Creative Child Support Orders and Settlements*, Collaborative Law (2011).

Jack W. Marr, *Creative Approaches to Child Support*, Adv. Fam. L. (2010).

Sec. 154.010. NO DISCRIMINATION BASED ON MARITAL STATUS OF PARENTS OR SEX

The amount of support ordered for the benefit of a child shall be determined without regard to:

(1) the sex of the obligor, obligee, or child; or

(2) the marital status of the parents of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 154.011. SUPPORT NOT CONDITIONED ON POSSESSION OR ACCESS

A court may not render an order that conditions the payment of child support on whether a managing conservator allows a possessory conservator to have possession of or access to a child.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 40, eff. Sept. 1, 1995.

ANNOTATIONS

Seidel v. Seidel, 10 S.W.3d 365 (Tex. App.—Dallas 1999, no pet.). An order that released a mother's domicile restriction in the event the father failed to pay child support violated this section because it conditioned the payment of child support on possession of and access to the child.

Sec. 154.012. SUPPORT PAID IN EXCESS OF SUPPORT ORDER

(a) If an obligor is not in arrears and the obligor's child support obligation has terminated, the obligee shall return to the obligor a child support payment made by the obligor that exceeds the amount of support ordered, regardless of whether the payment was made before, on, or after the date the child support obligation terminated.

(b) An obligor may file a suit to recover a child support payment under Subsection (a). If the court finds that the obligee failed to return a child support payment under Subsection (a), the court shall order the obligee to pay to the obligor attorney's fees and all court costs in addition to the amount of support paid after the date the child support order terminated. For good cause shown, the court may waive the

requirement that the obligee pay attorney's fees and costs if the court states the reasons supporting that finding.

Added by Acts 1999, 76th Leg., ch. 363, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 5, eff. Sept. 1, 2001.

ANNOTATIONS

In re B.S.H., 308 S.W.3d 76 (Tex. App.—Fort Worth 2009, no pet.). Excess child support payments are not additional or increased payments an obligor intends to make to meet the current needs of the child. Excess payments are those made by mistake or made with the intent to be advances against future obligations.

Sec. 154.013. CONTINUATION OF DUTY TO PAY SUPPORT AFTER DEATH OF OBLIGEE

(a) A child support obligation does not terminate on the death of the obligee but continues as an obligation to the child named in the support order, as required by this section.

(b) Notwithstanding any provision of the Estates Code, a child support payment held by the Title IV-D agency, a local registry, or the state disbursement unit or any uncashed check or warrant representing a child support payment made before, on, or after the date of death of the obligee shall be paid proportionately for the benefit of each surviving child named in the support order and not to the estate of the obligee. The payment is free of any creditor's claim against the deceased obligee's estate and may be disbursed as provided by Subsection (c).

(c) On the death of the obligee, current child support owed by the obligor for the benefit of the child or any amount described by Subsection (b) shall be paid to:

(1) a person, other than a parent, who is appointed as managing conservator of the child;

(2) a person, including the obligor, who has assumed actual care, control, and possession of the child, if a managing conservator or guardian of the child has not been appointed;

(3) the county clerk, as provided by Chapter 1355, Estates Code, in the name of and for the account of the child for whom the support is owed;

(4) a guardian of the child appointed under Title 3, Estates Code, as provided by that code; or

(5) the surviving child, if the child is an adult or has otherwise had the disabilities of minority removed.

(d) On presentation of the obligee's death certificate, the court shall render an order directing payment of child support paid but not disbursed to be made as provided by Subsection (c). A copy of the order shall be provided to:

(1) the obligor;

(2) as appropriate:

(A) the person having actual care, control, and possession of the child;

(B) the county clerk; or

(C) the managing conservator or guardian of the child, if one has been appointed;

(3) the local registry or state disbursement unit and, if appropriate, the Title IV-D agency; and

(4) the child named in the support order, if the child is an adult or has otherwise had the disabilities of minority removed.

(e) The order under Subsection (d) must contain:

(1) a statement that the obligee is deceased and that child support amounts otherwise payable to the obligee shall be paid for the benefit of a surviving child named in the support order as provided by Subsection (c);

(2) the name and age of each child named in the support order; and

(3) the name and mailing address of, as appropriate:

(A) the person having actual care, control, and possession of the child;

(B) the county clerk; or

(C) the managing conservator or guardian of the child, if one has been appointed.

(f) On receipt of the order required under this section, the local registry, state disbursement unit, or Title IV-D agency shall disburse payments as required by the order.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 6, eff. Sept. 1, 2001. Amended by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.018, eff. Sept. 1, 2017.

COMMENTS

This section applies only to suits commenced on or after September 1, 2001.

ANNOTATIONS

In re Richardson, 528 S.W.3d 155 (Tex. App.—El Paso 2017, orig. proceeding). The court of appeals stated that subsection 154.013(a) provides that "a child support obligation does not terminate on the death of the obligee but continues as an obligation to the child named in the support order." The court went on to say that section 154.016 provides that the "court may order a child support obligor to obtain and maintain a life insurance policy, including a decreasing term life insurance policy, that will establish an insurance-funded trust or an annuity payable to the obligee for the benefit of the child that will satisfy the support obligation under the child support order in the event of the obligor's death." As such, the court held that the trial court had authority to order father to maintain a life insurance policy for so long as his child support obligation remained in effect.

Sec. 154.014. PAYMENTS IN EXCESS OF COURT-ORDERED AMOUNT

(a) If a child support agency or local child support registry receives from an obligor who is not in arrears a child support payment in an amount that exceeds the court-ordered amount, the agency or registry, to the extent possible, shall give effect to any expressed intent of the obligor for the application of the amount that exceeds the court-ordered amount.

(b) If the obligor does not express an intent for the application of the amount paid in excess of the court-ordered amount, the agency or registry shall:

(1) credit the excess amount to the obligor's future child support obligation; and

(2) promptly disburse the excess amount to the obligee.

(c) This section does not apply to an obligee who is a recipient of public assistance under Chapter 31, Human Resources Code.

Added by Acts 2001, 77th Leg., ch. 1491, Sec. 2, eff. Jan. 1, 2002. Renumbered from Family Code Sec. 154.013 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(52), eff. Sept. 1, 2003.

ANNOTATIONS

In re B.S.H., 308 S.W.3d 76 (Tex. App.—Fort Worth 2009, no pet.). Excess child support payments under section 154.012 are not additional or increased payments an obligor intends to make to meet the current needs of the child. Excess payments are those made by mistake or made with the intent to be advances against future obligations.

Sec. 154.015. ACCELERATION OF UNPAID CHILD SUPPORT OBLIGATION

(a) In this section, "estate" has the meaning assigned by Chapter 22, Estates Code.

(b) If the child support obligor dies before the child support obligation terminates, the remaining unpaid balance of the child support obligation becomes payable on the date the obligor dies.

(c) For purposes of this section, the court of continuing jurisdiction shall determine the amount of the unpaid child support obligation for each child of the deceased obligor. In determining the amount of the unpaid child support obligation, the court shall consider all relevant factors, including:

(1) the present value of the total amount of monthly periodic child support payments that would become due between the month in which the obligor dies and the month in which the child turns 18 years of age, based on the amount of the periodic monthly child support payments under the child support order in effect on the date of the obligor's death;

(2) the present value of the total amount of health insurance and dental insurance premiums payable for the benefit of the child from the month in which the obligor dies until the month in which the child turns 18 years of age, based on the cost of health insurance and dental insurance for the child ordered to be paid on the date of the obligor's death;

(3) in the case of a disabled child under 18 years of age or an adult disabled child, an amount to be determined by the court under Section 154.306;

(4) the nature and amount of any benefit to which the child would be entitled as a result of the obligor's death, including life insurance proceeds, annuity payments, trust distributions, social security death benefits, and retirement survivor benefits; and

(5) any other financial resource available for the support of the child.

(d) If, after considering all relevant factors, the court finds that the child support obligation has been satisfied, the court shall render an order terminating the child support obligation. If the court finds that the child support obligation is not satisfied, the court shall render a judgment in favor of the obligee, for the benefit of the child, in the amount of the unpaid child support obligation determined under Subsection (c). The order must designate the obligee as constructive trustee, for the benefit of the child, of any money received in satisfaction of the judgment.

(e) The obligee has a claim, on behalf of the child, against the deceased obligor's estate for the unpaid child support obligation determined under Subsection (c). The obligee may present the claim in the manner provided by the Estates Code.

(f) If money paid to the obligee for the benefit of the child exceeds the amount of the unpaid child support obligation remaining at the time of the obligor's death, the obligee shall hold the excess amount as constructive trustee for the benefit of the deceased obligor's estate until the obligee delivers the excess amount to the legal representative of the deceased obligor's estate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1404 (S.B. 617), Sec. 2, eff. September 1, 2007. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 9, eff. September 1, 2018; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.019, eff. September 1, 2017.

Sec. 154.016. Provision of Support in Event of Death of Parent

(a) The court may order a child support obligor to obtain and maintain a life insurance policy, including a decreasing term life insurance policy, that will establish an insurance-funded trust or an annuity payable to the obligee for the benefit of the child that will satisfy the support obligation under the child support order in the event of the obligor's death.

(b) In determining the nature and extent of the obligation to provide for the support of the child in the event of the death of the obligor, the court shall consider all relevant factors, including:

(1) the present value of the total amount of monthly periodic child support payments from the date the child support order is rendered until the month in which the child turns 18 years of age, based on the amount of the periodic monthly child support payment under the child support order;

(2) the present value of the total amount of health insurance and dental insurance premiums payable for the benefit of the child from the date the child support order is rendered until the month in which the child turns 18 years of age, based on the cost of health insurance and dental insurance for the child ordered to be paid; and

(3) in the case of a disabled child under 18 years of age or an adult disabled child, an amount to be determined by the court under Section 154.306.

(c) The court may, on its own motion or on a motion of the obligee, require the child support obligor to provide proof satisfactory to the court verifying compliance with the order rendered under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1404 (S.B. 617), Sec. 2, eff. September 1, 2007. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 10, eff. September 1, 2018.

ANNOTATIONS

In re Richardson, 528 S.W.3d 155 (Tex. App.—El Paso 2017, orig. proceeding). The court of appeals stated that subsection 154.013(a) provides that "a child support obligation does not terminate on the death of the obligee but continues as an obligation to the child named in the support order." The court went on to say that section 154.016 provides that the "court may order a child support obligor to obtain and maintain a life insurance policy, including a decreasing term life insurance policy, that will establish an insurance-funded trust or an annuity payable to the obligee for the benefit of the child that will satisfy the support obligation under the child support order in the event of the obligor's death." As such, the court held that the trial court had authority to order father to maintain a life insurance policy for so long as his child support obligation remained in effect.

Holmes v. Holmes, No. 03-08-00791-CV, 2010 WL 3927593 (Tex. App.—Austin Oct. 5, 2010, no pet.) (mem. op.). A trial court has discretion to order a child support obligor to maintain a life insurance policy for the benefit of the child as additional child support.

SUBCHAPTER B. COMPUTING NET RESOURCES AVAILABLE FOR PAYMENT OF CHILD SUPPORT

Sec. 154.061. Computing Net Monthly Income

(a) Whenever feasible, gross income should first be computed on an annual basis and then should be recalculated to determine average monthly gross income.

(b) The Title IV-D agency shall annually promulgate tax charts to compute net monthly income, subtracting from gross income social security taxes and federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re N.T., 335 S.W.3d 660 (Tex. App.—El Paso 2011, no pet.). A trial court is not required to accept an obligor's evidence of income and net resources as true, especially when that evidence includes neither tax returns nor any records of income from employment. A trial court may find that an obligor's net resources are higher than claimed based on testimony and evidence brought by the obligee or other evidence set forth in the record.

Foster v. Alejandre, No. 13-08-00535-CV, 2009 WL 2264046 (Tex. App.—Corpus Christi July 30, 2009, no pet.) (mem. op.). A trial court must deduct both social security and federal income taxes from an obligor's resources when determining the net resources available for child support even when the obligor does not pay his taxes.

Norris v. Norris, 56 S.W.3d 333 (Tex. App.—El Paso 2001, no pet.). A trial court did not abuse its discretion by averaging the father's income over a two-year period in order to calculate the father's child support obligation under the guidelines.

Powell v. Swanson, 893 S.W.2d 161 (Tex. App.—Houston [1st Dist.] 1995, no writ). When calculating child support, depreciation should not be included in the calculation of net rental income.

RESOURCES

Katherine A. Kinser & Lauren E. Melhart, *Pursue and Defend a Child Support Case*, Family Law 101 (2016).

Jack W. Marr, *Creative Approaches to Child Support*, Adv. Fam. L. (2010).

Karen L. Marvel, *Creative Ways to Enforce & Collect Child Support Claims*, State Bar Col. Summer School (2010).

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Kristal C. Thomson & Tifini Cigarroa, *Child Support: Coloring Outside of the Lines*, Marriage Dissolution (2017).

Sec. 154.062. NET RESOURCES

(a) The court shall calculate net resources for the purpose of determining child support liability as provided by this section.

(b) Resources include:

(1) 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses);

(2) interest, dividends, and royalty income;

(3) self-employment income;

(4) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation); and

(5) all other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits other than supplemental security income, United States Department of Veterans Affairs disability benefits other than non-service-connected disability pension benefits, as defined by 38 U.S.C. Section 101(17), unemployment benefits, disability and workers' compensation benefits, interest income from notes regardless of the source, gifts and prizes, spousal maintenance, and alimony.

(c) Resources do not include:

(1) return of principal or capital;

(2) accounts receivable;

(3) benefits paid in accordance with the Temporary Assistance for Needy Families program or another federal public assistance program; or

(4) payments for foster care of a child.

(d) The court shall deduct the following items from resources to determine the net resources available for child support:

(1) social security taxes;

(2) federal income tax based on the tax rate for a single person claiming one personal exemption and the standard deduction;

(3) state income tax;

(4) union dues;

(5) expenses for the cost of health insurance, dental insurance, or cash medical support for the obligor's child ordered by the court under Sections 154.182 and 154.1825; and

(6) if the obligor does not pay social security taxes, nondiscretionary retirement plan contributions.

(e) In calculating the amount of the deduction for health care or dental coverage for a child under Subsection (d)(5), if the obligor has other minor dependents covered under the same health or dental insurance plan, the court shall divide the total cost to the obligor for the insurance by the total number of minor dependents, including the child, covered under the plan.

(f) For purposes of Subsection (d)(6), a nondiscretionary retirement plan is a plan to which an employee is required to contribute as a condition of employment.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 41, eff. Sept. 1, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 363 (S.B. 303), Sec. 1, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 620 (H.B. 448), Sec. 1, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 9.001, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 4, eff. June 19, 2009. Acts 2009, 81st Leg., R.S., Ch. 834 (S.B. 1820), Sec. 1, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 1, eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 9.001, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 932 (S.B. 1751), Sec. 1, eff. September 1, 2012. Acts 2013, 83rd Leg., R.S., Ch. 1046 (H.B. 3017), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 11, eff. September 1, 2018.

ANNOTATIONS

Attaguile v. Attaguile, No. 08-16-00222-CV, 2018 WL 4659580 (Tex. App.—El Paso Sept. 28, 2018, no pet.). An obligor's retirement account was not considered in his net resources for the purpose of determining child support liability where obligor, who was only 54 at the time of trial, retired but had not yet reached the age at which he qualified for distributions without incurring a penalty.

Stringfellow v. Stringfellow, 538 S.W.3d 116 (Tex. App.—El Paso 2017, no pet.). The trial court was required to calculate child support with the presumptive "cap" of $8,550 for net monthly income and deduct $500 in monthly health insurance premiums for a net monthly income of $8,050 to determine the obligor's child support liability. Though the obligor's gross monthly income exceeded the presumptive cap, the trial court was not required to consider the obligor's actual gross monthly income because the obligee did not offer any evidence of the proven needs of the child.

Reagins v. Walker, 524 S.W.3d 757 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Although a party may rely on Internet research to establish the net resources of the opposing party, evidence of that party's actual net resources, not generic research, is required.

In re A.T., No. 05-16-00539-CV, 2017 WL 2351084 (Tex. App.—Dallas May 31, 2017, no pet.) (mem. op.). A trial court may not take judicial notice of testimony or evidence from a temporary orders hearing to establish child support at final trial. The evidence adduced at the temporary orders hearing must be admitted at final trial to be considered.

In re A.M.P., 368 S.W.3d 842 (Tex. App.—Houston [14th Dist.] 2012, no pet.). When an inheritance is considered a "net resource," an advance on a party's inheritance is also considered a net resource for child support purposes (discussing *In re P.C.S.*, 320 S.W.3d 525 (Tex. App.—Dallas 2010, pet. denied)).

In re N.T., 335 S.W.3d 660 (Tex. App.—El Paso 2011, no pet.). A trial court is not required to accept an obligor's evidence of income and net resources as true, especially when that evidence includes neither tax returns nor any records of income from employment. A trial court may find that an obligor's net resources are higher than claimed based on testimony and evidence brought by the obligee or other evidence set forth in the record.

In re P.C.S., 320 S.W.3d 525 (Tex. App.—Dallas 2010, pet. denied). Two cash installments paid to a father as the father's inheritance constituted a "net resource" for purposes of calculating child support. However, business benefits received by the father, such as health insurance and the use of a company vehicle, were not monthly net resources although they could be considered as additional factors under section 154.123 when determining child support.

In re A.A.G., 303 S.W.3d 739 (Tex. App.—Waco 2009, no pet.). Annuity payments received as part of a structured settlement are considered "net resources" for purposes of calculating child support, except for annuity payments constituting a return of principal.

Knight v. Knight, 131 S.W.3d 535 (Tex. App.—El Paso 2004, no pet.). A trial court may calculate child support based on an obligor's former, certain income, as opposed to current, uncertain income, when the obligor does not attend trial, does not present evidence of his income at trial, and fails to testify at the hearing on his motion for new trial.

In re L.R.P., 98 S.W.3d 312 (Tex. App.—Houston [1st Dist.] 2003, pet. dism'd). An appellate court approved imputing a scholarship and monthly funds a college student received on a regular basis from his parents in order to calculate the student's "net resources," likening the monthly funds to spousal maintenance, which persuaded the court "that this kind of ongoing support falls within the purview of the statute."

RESOURCES

Bruce D. Bain, *Child Support: Statutory and Contractual*, Marriage Dissolution (2012).

Patricia N. Carter, *Creative Child Support Orders and Settlements*, Collaborative Law (2011).

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Sec. 154.063. PARTY TO FURNISH INFORMATION

The court shall require a party to:

(1) furnish information sufficient to accurately identify that party's net resources and ability to pay child support; and

(2) produce copies of income tax returns for the past two years, a financial statement, and current pay stubs.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

PRACTICE TIPS

Use this section as a ground for an objection to a request for information that is beyond the scope of what is required for calculating child support.

ANNOTATIONS

Reagins v. Walker, 524 S.W.3d 757 (Tex. App.—Houston [14th Dist] 2017, no pet.). Father's failure to provide information regarding income does not excuse mother from having to offer sufficient proof of income to justify modification. Mother's information obtained from the Internet was insufficient.

In re N.T., 335 S.W.3d 660 (Tex. App.—El Paso 2011, no pet.). A trial court is not required to accept an obligor's evidence of income and net resources as true, especially when that evidence includes neither tax returns nor any records of income from employment. A trial court may find that an obligor's net resources are higher than claimed based on testimony and evidence brought by the obligee or other evidence set forth in the record.

Sec. 154.064. MEDICAL SUPPORT AND DENTAL SUPPORT FOR CHILD PRESUMPTIVELY PROVIDED BY OBLIGOR

The guidelines for support of a child are based on the assumption that the court will order the obligor to provide medical support and dental support for the child in addition to the amount of child support calculated in accordance with those guidelines.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 7, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 12, eff. September 1, 2018.

Sec. 154.065. SELF-EMPLOYMENT INCOME

(a) Income from self-employment, whether positive or negative, includes benefits allocated to an individual from a business or undertaking in the form of a proprietorship, partnership, joint venture, close corporation, agency, or independent contractor, less ordinary and necessary expenses required to produce that income.

(b) In its discretion, the court may exclude from self-employment income amounts allowable under federal income tax law as depreciation, tax credits, or any other business expenses shown by the evidence to be inappropriate in making the determination of income available for the purpose of calculating child support.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re C.P.K., No. 07-17-00287-CV, 2018 WL 2170821 (Tex. App.—Amarillo May 10, 2018, no pet.) (mem. op.). Self-employment tax returns are not determinative of net resources, but they are relevant. A trial court has the discretion to exclude from self-employment income amounts allowable under federal income tax law shown by the evidence to be "inappropriate in making the determination of income available for the purpose of calculating child support."

In re C.A.T., 316 S.W.3d 202 (Tex. App.—Dallas 2010, no pet.). An "employer" does not include a self-employed obligor, so Tex. Fam. Code § 157.312(g) does not prohibit service of a child support lien on a financial institution into which an obligor deposits all his earnings and from which he pays all his expenses, both personal and business.

RESOURCES

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Sec. 154.066. INTENTIONAL UNEMPLOYMENT OR UNDEREMPLOYMENT

(a) If the actual income of the obligor is significantly less than what the obligor could earn because of intentional unemployment or underemployment, the court may apply the support guidelines to the earning potential of the obligor.

(b) In determining whether an obligor is intentionally unemployed or underemployed, the court may consider evidence that the obligor is a veteran, as defined by 38 U.S.C. Section 101(2), who is seeking or has been awarded:

(1) United States Department of Veterans Affairs disability benefits, as defined by 38 U.S.C. Section 101(16); or

(2) non-service-connected disability pension benefits, as defined by 38 U.S.C. Section 101(17).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 1046 (H.B. 3017), Sec. 2, eff. September 1, 2013.

PRACTICE TIPS

Iliff v. Iliff, 339 S.W.3d 74 (Tex. 2011), stands not only for the proposition that a party does not have to prove that a party is intentionally underemployed for the purpose of avoiding child support, but also for the proposition that a party may be validly underemployed for a number of reasons. Thus, a practitioner should exercise caution when bringing a claim under this section, as a party simply making less money now than in the past is not automatically underemployed. For example, if that party has taken a lower paying job for a more flexible schedule to allow for more time with the children, the claim of underemployment might easily be disputed.

ANNOTATIONS

Iliff v. Iliff, 339 S.W.3d 74 (Tex. 2011). An obligor who had a bachelor's degree and master's degree, previously worked in the chemical industry for twenty years, and voluntarily quit his $100,000 per year job was intentionally unemployed or underemployed, regardless of whether his purpose was to avoid child support, because this section requires only a finding of intentional unemployment or underemployment.

In re J.D.A., No. 05-17-00053-CV, 2017 WL 6503094 (Tex. App.—Dallas Dec. 19, 2017, no pet.) (mem. op.). A party's earning potential must be based on evidence, not on what the trial court researches.

Burley v. Burley, No. 02-16-00119-CV, 2017 WL 4542854 (Tex. App.—Fort Worth Oct. 12, 2017, no pet.) (mem. op.). A wife's testimony that her husband had held a $50,000 per annum job, then quit, then obtained another $50,000 job in the same field, then left that job, supported a finding that the husband's potential annual gross income equaled $50,000.

Trumbull v. Trumbull, 397 S.W.3d 317 (Tex. App.—Houston [14th] Dist. 2013, no pet.). A wife's testimony that a husband was capable of making $60,000 per year "if he applies himself" was not sufficient evidence for a trial court to conclude that the husband was intentionally underemployed.

RESOURCES

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Sec. 154.067. DEEMED INCOME

(a) When appropriate, in order to determine the net resources available for child support, the court may assign a reasonable amount of deemed income attributable to assets that do not currently produce income. The court shall also consider whether certain property that is not producing income can be liquidated without an unreasonable financial sacrifice because of cyclical or other market conditions. If

there is no effective market for the property, the carrying costs of such an investment, including property taxes and note payments, shall be offset against the income attributed to the property.

(b) The court may assign a reasonable amount of deemed income to income-producing assets that a party has voluntarily transferred or on which earnings have intentionally been reduced.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Royer v. Royer, 98 S.W.3d 284 (Tex. App.—Beaumont 2003, no pet.). "[I]t is proper for the trial court to take into consideration the value of a party's property, even though it is not producing income, because the party may be required to dispose of assets in order to meet his support obligations." In this case, the obligor's income was essentially what he chose to pay himself from his own business, even though his discretionary income was much higher than the obligor claimed.

RESOURCES

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Sec. 154.068. WAGE AND SALARY PRESUMPTION

(a) In the absence of evidence of a party's resources, as defined by Section 154.062(b), the court shall presume that the party has income equal to the federal minimum wage for a 40-hour week to which the support guidelines may be applied.

(b) The presumption required by Subsection (a) does not apply if the court finds that the party is subject to an order of confinement that exceeds 90 days and is incarcerated in a local, state, or federal jail or prison at the time the court makes the determination regarding the party's income.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 1046 (H.B. 3017), Sec. 3, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1249 (H.B. 943), Sec. 1, eff. September 1, 2015.

Sec. 154.069. NET RESOURCES OF SPOUSE

(a) The court may not add any portion of the net resources of a spouse to the net resources of an obligor or obligee in order to calculate the amount of child support to be ordered.

(b) The court may not subtract the needs of a spouse, or of a dependent of a spouse, from the net resources of the obligor or obligee.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re J.C.K., 143 S.W.3d 131 (Tex. App.—Waco 2004, no pet.). An obligor's net resources do not include income generated by his spouse's sole-management community property absent evidence that would justify varying from the child support guidelines (citing *In re Knott*, 118 S.W.3d 899 (Tex. App.—Texarkana 2003, no pet.).

In re Knott, 118 S.W.3d 899 (Tex. App.—Texarkana 2003, no pet.). A spouse's income from dividends, capital gains, and interest income are not part of an obligor's net resources regardless of whether a premarital agreement classified them as the spouse's separate property.

Sec. 154.070. CHILD SUPPORT RECEIVED BY OBLIGOR

In a situation involving multiple households due child support, child support received by an obligor shall be added to the obligor's net resources to compute the net resources before determining the child support credit or applying the percentages in the multiple household table in this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

SUBCHAPTER C. CHILD SUPPORT GUIDELINES

Sec. 154.121. GUIDELINES FOR THE SUPPORT OF A CHILD

The child support guidelines in this subchapter are intended to guide the court in determining an equitable amount of child support.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re J.A.J., 283 S.W.3d 495 (Tex. App.—Beaumont 2009, no pet.). Even though this subchapter sets forth guidelines for the amount of child support to be awarded in each case, the trial court's compliance with the guidelines is not mandatory.

Sec. 154.122. APPLICATION OF GUIDELINES REBUTTABLY PRESUMED IN BEST INTEREST OF CHILD

(a) The amount of a periodic child support payment established by the child support guidelines in effect in this state at the time of the hearing is presumed to be reasonable, and an order of support conforming to the guidelines is presumed to be in the best interest of the child.

(b) A court may determine that the application of the guidelines would be unjust or inappropriate under the circumstances.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 154.123. ADDITIONAL FACTORS FOR COURT TO CONSIDER

(a) The court may order periodic child support payments in an amount other than that established by the guidelines if the evidence rebuts the presumption that application of the guidelines is in the best interest of the child and justifies a variance from the guidelines.

(b) In determining whether application of the guidelines would be unjust or inappropriate under the circumstances, the court shall consider evidence of all relevant factors, including:

(1) the age and needs of the child;

(2) the ability of the parents to contribute to the support of the child;

(3) any financial resources available for the support of the child;

(4) the amount of time of possession of and access to a child;

(5) the amount of the obligee's net resources, including the earning potential of the obligee if the actual income of the obligee is significantly less than what the obligee could earn because the obligee is intentionally unemployed or underemployed and including an increase or decrease in the income of the obligee or income that may be attributed to the property and assets of the obligee;

(6) child care expenses incurred by either party in order to maintain gainful employment;

(7) whether either party has the managing conservatorship or actual physical custody of another child;

(8) the amount of alimony or spousal maintenance actually and currently being paid or received by a party;

(9) the expenses for a son or daughter for education beyond secondary school;

(10) whether the obligor or obligee has an automobile, housing, or other benefits furnished by his or her employer, another person, or a business entity;

(11) the amount of other deductions from the wage or salary income and from other compensation for personal services of the parties;

(12) provision for health care insurance and payment of uninsured medical expenses;

(13) special or extraordinary educational, health care, or other expenses of the parties or of the child;

(14) the cost of travel in order to exercise possession of and access to a child;

(15) positive or negative cash flow from any real and personal property and assets, including a business and investments;

(16) debts or debt service assumed by either party; and

(17) any other reason consistent with the best interest of the child, taking into consideration the circumstances of the parents.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

The net resources "cap" began at $4,000 in 1987, then rose to $6,000 in 1993, then rose to $7,500 in 2007. It rose to $8,550 effective September 1, 2013.

ANNOTATIONS

Rodriguez v. Rodriguez, 860 S.W.2d 414 (Tex. 1993). The additional factors set forth in this section apply only to the first $4,000 of monthly net resources. Section 154.126 applies to an obligor's net resources that exceed $4,000 per month.

In re Q.D.S., No. 04-17-00105-CV, 2018 WL 1831686 (Tex. App.—San Antonio Apr. 18, 2018, no pet.) (mem. op.). The trial court did not abuse its discretion by deviating from guideline child support and awarding a slightly higher amount when the evidence showed that one of the children suffered from dyspraxia and was still wearing diapers at the age of seven and the father of the children visited far less than that afforded by a standard possession order.

Stringfellow v. Stringfellow, 538 S.W.3d 116 (Tex. App.—El Paso 2017, no pet.). The trial court was required to calculate child support with the presumptive "cap" of $8,550 for net monthly income and deduct $500 in monthly health insurance premiums for a net monthly income of $8,050 to determine the obligor's child support liability. Though the obligor's gross monthly income exceeded the presumptive cap, the trial court was not required to consider the obligor's actual gross monthly income because the obligee did not offer any evidence of the proven needs of the child.

In re P.C.S., 320 S.W.3d 525 (Tex. App.—Dallas 2010, pet. denied). Two cash installments paid to a father as the father's inheritance constituted a "net resource" under section 154.062. However, business benefits received by the

father, such as health insurance and the use of a company vehicle, were not monthly net resources although they could be considered as additional factors under this section when determining child support.

In re J.M.C., No. 2-09-292-CV, 2010 WL 2889671 (Tex. App.—Fort Worth July 22, 2010, no pet.) (mem. op.). A trial court properly considered a father's travel expenses, from Romania to the United States to visit the child, when it modified his child support.

Sanchez v. Sanchez, 915 S.W.2d 99 (Tex. App.—San Antonio 1996, no writ). Split custody of the parties's children, among other things, allowed a trial court to vary from the child support guidelines.

In re Marriage of Thurmond, 888 S.W.2d 269 (Tex. App.—Amarillo 1994, writ denied). A trial court may not consider the prior lifestyle of the child in setting child support.

Hatteberg v. Hatteberg, 933 S.W.2d 522 (Tex. App.—Houston [1st Dist.] 1994, no writ). A trial court did not abuse its discretion by awarding child support above the statutory guidelines when the obligee introduced evidence regarding the child's need for private school, extracurricular expenses, and medical care.

Friedman v. Friedman, 521 S.W.2d 111 (Tex. Civ. App.—Houston [14th Dist.] 1975, no writ). A trial court is not required to accept as true the testimony of either parent regarding the needs of the child.

RESOURCES

Karen L. Marvel, *Creative Ways to Enforce & Collect Child Support Claims*, State Bar Col. Summer School (2010).

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Jacqueline Smith, *Drafting Unique Child Support Provisions: Above Guidelines, Special Needs Child, and 154.300*, Adv. Fam. L. Drafting (2017).

Sec. 154.124. AGREEMENT CONCERNING SUPPORT

(a) To promote the amicable settlement of disputes between the parties to a suit, the parties may enter into a written agreement containing provisions for support of the child and for modification of the agreement, including variations from the child support guidelines provided by Subchapter C.

(b) If the court finds that the agreement is in the child's best interest, the court shall render an order in accordance with the agreement.

(c) Terms of the agreement pertaining to child support in the order may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as a contract.

(d) If the court finds the agreement is not in the child's best interest, the court may request the parties to submit a revised agreement or the court may render an order for the support of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 480, Sec. 1, eff. Sept. 1, 2003.

COMMENTS

It is important to note that in 2003 the Texas Legislature amended this section to remove any enforceability of child support agreements by contract. Thus, if a child support agreement was entered into before 2003, it might be enforceable as a contract under the prior statute.

ANNOTATIONS

In re M.A.H., 365 S.W.3d 814 (Tex. App.—Dallas 2012, no pet.). When a husband and wife signed an unmediated agreement as to child support, conservatorship, and possession of the children, but the wife later revoked her consent to the agreement before the trial court rendered judgment, the trial court could not sign final orders on child support based on the agreement because of the revocation.

Pettit v. Pettit, 818 S.W.2d 561 (Tex. App.—Beaumont 1991, no writ). Child support contained within a consent judgment still can be subject to modification at a later date, even without a showing of fraud, accident, mistake, or consent.

Akin v. Akin, 417 S.W.2d 882 (Tex. Civ. App.—Austin 1967, no writ). An agreed decree or order in which an obligor agrees to pay the obligee a certain amount in child support is considered a consent judgment. A consent judgment has the same force and effect as a judgment rendered after contested litigation.

RESOURCES

Bruce D. Bain, *Child Support: Statutory and Contractual*, Marriage Dissolution (2012).

Karen L. Marvel, *Creative Ways to Enforce & Collect Child Support Claims*, State Bar Col. Summer School (2010).

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Sec. 154.125. APPLICATION OF GUIDELINES TO NET RESOURCES

(a) The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined under Subsection (a–1), whichever is greater.

(a–1) The dollar amount prescribed by Subsection (a) is adjusted every six years as necessary to reflect inflation. The Title IV-D agency shall compute the adjusted amount, to take effect beginning September 1 of the year of the adjustment, based on the percentage change in the consumer price index during the 72-month period preceding March 1 of the year of the adjustment, as rounded to the nearest $50 increment. The Title IV-D agency shall publish the adjusted amount in the Texas Register before September 1 of the year in which the adjustment takes effect. For purposes of this subsection, "consumer price index" has the meaning assigned by Section 341.201, Finance Code.

(b) If the obligor's monthly net resources are not greater than the amount provided by Subsection (a), the court shall presumptively apply the following schedule in rendering the child support order:

CHILD SUPPORT GUIDELINES

BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR

1 child	20% of Obligor's Net Resources
2 children	25% of Obligor's Net Resources
3 children	30% of Obligor's Net Resources
4 children	35% of Obligor's Net Resources
5 children	40% of Obligor's Net Resources
6+ children	Not less than the amount for 5 children

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 620 (H.B. 448), Sec. 2, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 5, eff. June 19, 2009.

COMMENTS

The net resources "cap" began at $4,000 in 1987, then rose to $6,000 in 1993, then rose to $7,500 in 2007. It rose to $8,550 effective September 1, 2013.

ANNOTATIONS

Stringfellow v. Stringfellow, 538 S.W.3d 116 (Tex. App.—El Paso 2017, no pet.). When net resources are "capped" at $8,550, and there are no proven needs to warrant additional child support, $8,550 equals net resources, not gross monthly income, for child support calculations.

RESOURCES

Karen L. Marvel, *Creative Ways to Enforce & Collect Child Support Claims*, State Bar Col. Summer School (2010).

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Sec. 154.126. APPLICATION OF GUIDELINES TO ADDITIONAL NET RESOURCES

(a) If the obligor's net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor's net resources that does not exceed that amount. Without further reference to the percentage recommended by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child.

(b) The proper calculation of a child support order that exceeds the presumptive amount established for the portion of the obligor's net resources provided by Section 154.125(a) requires that the entire amount of the presumptive award be subtracted from the proven total needs of the child. After the presumptive award is subtracted, the court shall allocate between the parties the responsibility to meet the additional needs of the child according to the circumstances of the parties. However, in no event may the obligor be required to pay more child support than the greater of the presumptive amount or the amount equal to 100 percent of the proven needs of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 620 (H.B. 448), Sec. 3, eff. September 1, 2007.

COMMENTS

The net resources "cap" began at $4,000 in 1987, then rose to $6,000 in 1993, then rose to $7,500 in 2007. It rose to $8,550 effective September 1, 2013.

ANNOTATIONS

Rodriguez v. Rodriguez, 860 S.W.2d 414 (Tex. 1993). This section applies to an obligor's net resources that exceed $4,000 per month. The additional factors set forth in section 154.123 apply only to the first $4,000 of monthly net resources.

In re K.F., No. 02-18-00187-CV, 2018 WL 6816119 (Tex. App.—Fort Worth Dec. 27, 2018, pet. filed) (mem. op.). The trial court abused its discretion by awarding child support beyond the statutory guidelines where the evidence focused more on obligor's increased earnings rather than on the proven needs of the children. Furthermore, the court of appeals noted that the increase in the children's expenses was tied to obligee's lifestyle change associated with her new marriage and upgraded housing, which was insufficient to permit a child support award above the statutory guidelines.

In re J.A.H., 311 S.W.3d 536 (Tex. App.—El Paso 2009, no pet.). A child support award above the statutory guidelines must be based on the children's unmet needs. These needs are not limited to "the bare necessities of life." "Needs of the child" is an ambiguous term and has never been defined in the Family Code. Accordingly, the courts must determine the needs of a child in their discretion and on a case-by-case basis.

In re Gonzalez, 993 S.W.2d 147 (Tex. App.—San Antonio 1999, no pet.). A trial court did not abuse its discretion, even though it awarded child support in excess of $6,000 per month, when the mother testified to the children's proven needs, which included the need for a bodyguard for the children due to kidnapping attempts and the need for the children to have a nanny so that the mother could search for a job and pursue cases against the father.

Scott v. Younts, 926 S.W.2d 415 (Tex. App.—Corpus Christi 1996, writ denied). A child's mother, who was the child's managing conservator, was in the best position to explain the child's needs. However, a child's needs do not include a child's extravagant demands, such as the need for a special pet, which will not justify increasing child support.

RESOURCES

Karen L. Marvel, *Creative Ways to Enforce & Collect Child Support Claims*, State Bar Col. Summer School (2010).

Kyle W. Sanders, Amy C. Allen & Ellie P. Natenberg, *Child Support: It's Only Income If You Can Find It*, Adv. Fam. L. (2011).

Jacqueline Smith, *Drafting Unique Child Support Provisions: Above Guidelines, Special Needs Child, and 154.300*, Adv. Fam. L. Drafting (2017).

Sec. 154.127. PARTIAL TERMINATION OF SUPPORT OBLIGATION

(a) A child support order for more than one child shall provide that, on the termination of support for a child, the level of support for the remaining child or children is in accordance with the child support guidelines.

(b) A child support order is in compliance with the requirement imposed by Subsection (a) if the order contains a provision that specifies:

(1) the events, including a child reaching the age of 18 years or otherwise having the disabilities of minority removed, that have the effect of terminating the obligor's obligation to pay child support for that child; and

(2) the reduced total amount that the obligor is required to pay each month after the occurrence of an event described by Subdivision (1).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 10, eff. September 1, 2007.

PRACTICE TIPS

The parties could agree not to provide a step-down provision for multiple reasons. For example, as the legislature frequently modifies the child support cap (currently $8,550) for applying the percentage guidelines, parties might decide not to provide for step-down provisions in an effort to stay close to the percentage guidelines.

ANNOTATIONS

Deltuva v. Deltuva, 113 S.W.3d 882 (Tex. App.—Dallas 2003, no pet.). A trial court abused its discretion by failing to include a reduction or "step-down" provision for a father's child support as required by this section. Thus, the father essentially was paying a fixed amount of child support despite the number of minor children he was obligated to support.

Sec. 154.128. COMPUTING SUPPORT FOR CHILDREN IN MORE THAN ONE HOUSEHOLD

(a) In applying the child support guidelines for an obligor who has children in more than one household, the court shall apply the percentage guidelines in this subchapter by making the following computation:

(1) determine the amount of child support that would be ordered if all children whom the obligor has the legal duty to support lived in one household by applying the schedule in this subchapter;

(2) compute a child support credit for the obligor's children who are not before the court by dividing the amount determined under Subdivision (1) by the total number of children whom the obligor is obligated to support and multiplying that number by the number of the obligor's children who are not before the court;

(3) determine the adjusted net resources of the obligor by subtracting the child support credit computed under Subdivision (2) from the net resources of the obligor; and

(4) determine the child support amount for the children before the court by applying the percentage guidelines for one household for the number of children of the obligor before the court to the obligor's adjusted net resources.

(b) For the purpose of determining a child support credit, the total number of an obligor's children includes the children before the court for the establishment or modification of a support order and any other children, including children residing with the obligor, whom the obligor has the legal duty of support.

(c) The child support credit with respect to children for whom the obligor is obligated by an order to pay support is computed, regardless of whether the obligor is delinquent in child support payments, without regard to the amount of the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 154.129. ALTERNATIVE METHOD OF COMPUTING SUPPORT FOR CHILDREN IN MORE THAN ONE HOUSEHOLD

In lieu of performing the computation under the preceding section, the court may determine the child support amount for the children before the court by applying the percentages in the table below to the obligor's net resources:

MULTIPLE FAMILY ADJUSTED GUIDELINES

(% OF NET RESOURCES)

		Number of children before the court						
		1	2	3	4	5	6	7
Number of other children for whom the obligor has a duty of support	0	20.00	25.00	30.00	35.00	40.00	40.00	40.00
	1	17.50	22.50	27.38	32.20	37.33	37.71	38.00
	2	16.00	20.63	25.20	30.33	35.43	36.00	36.44
	3	14.75	19.00	24.00	29.00	34.00	34.67	35.20
	4	13.60	18.33	23.14	28.00	32.89	33.60	34.18
	5	13.33	17.86	22.50	27.22	32.00	32.73	33.33
	6	13.14	17.50	22.00	26.60	31.27	32.00	32.62
	7	13.00	17.22	21.60	26.09	30.67	31.38	32.00

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 154.130. FINDINGS IN CHILD SUPPORT ORDER

(a) Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in rendering an order of child support, the court shall make the findings required by Subsection (b) if:

(1) a party files a written request with the court before the final order is signed, but not later than 20 days after the date of rendition of the order;

(2) a party makes an oral request in open court during the hearing; or

(3) the amount of child support ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable.

(a–1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 12(2), eff. Sept. 1, 2017.

(b) If findings are required by this section, the court shall state whether the application of the guidelines would be unjust or inappropriate and shall state the following in the child support order:

"(1) the net resources of the obligor per month are $_____;

"(2) the net resources of the obligee per month are $_____;

"(3) the percentage applied to the obligor's net resources for child support is _____%; and

"(4) if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable."

(c) Findings under Subsection (b)(2) are required only if evidence of the monthly net resources of the obligee has been offered.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 8, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 620 (H.B. 448), Sec. 4, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 6, eff. June 19, 2009. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 37, eff. June 19, 2009. Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 10, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 12(2), eff. Sept. 1, 2017.

COMMENTS

When findings are required in a case and properly requested, a trial court must make the appropriate findings of fact and conclusions of law. If the trial court fails to do so, it abuses its discretion, and the failure constitutes automatic reversible error on appeal.

The net resources "cap" began at $4,000 in 1987, then rose to $6,000 in 1993, then rose to $7,500 in 2007. It rose to $8,550 effective September 1, 2013.

ANNOTATIONS

Tenery v. Tenery, 932 S.W.2d 29 (Tex. 1997) (per curiam). A trial court's failure to make findings of fact and conclusions of law under this section is reversible error. When a trial court deviates from guideline child support, a failure to make written findings of fact and conclusions of law effectively prevents the obligor from contesting the child support award.

In re D.B., No. 07-16-00359-CV, 2017 WL 4563996 (Tex. App.—Amarillo Oct. 11, 2017, no pet.) (mem. op.). Findings are not required when the court does not order either parent to pay child support, as here, where the parents' possession times were equal.

In re J.A.H., 311 S.W.3d 536 (Tex. App.—El Paso 2009, no pet.). When a motion to modify child support is denied, the trial court is not required to make findings under this section.

In re J.D.M., 221 S.W.3d 740 (Tex. App.—Waco 2007, no pet.). This section does not require findings to be made regarding the best interest of the child.

Yarbrough v. Yarbrough, 151 S.W.3d 687 (Tex. App.—Waco 2004, no pet.). The percentage guidelines apply only to the first $6,000 of an obligor's monthly net resources. Thus, a trial court is not required to make findings when the child support is awarded from resources above the first $6,000 of an obligor's monthly net resources.

Sec. 154.131. RETROACTIVE CHILD SUPPORT

(a) The child support guidelines are intended to guide the court in determining the amount of retroactive child support, if any, to be ordered.

(b) In ordering retroactive child support, the court shall consider the net resources of the obligor during the relevant time period and whether:

(1) the mother of the child had made any previous attempts to notify the obligor of his paternity or probable paternity;

(2) the obligor had knowledge of his paternity or probable paternity;

(3) the order of retroactive child support will impose an undue financial hardship on the obligor or the obligor's family; and

(4) the obligor has provided actual support or other necessaries before the filing of the action.

(c) It is presumed that a court order limiting the amount of retroactive child support to an amount that does not exceed the total amount of support that would have been due for the four years preceding the date the petition seeking support was filed is reasonable and in the best interest of the child.

(d) The presumption created under this section may be rebutted by evidence that the obligor:

(1) knew or should have known that the obligor was the father of the child for whom support is sought; and

(2) sought to avoid the establishment of a support obligation to the child.

(e) An order under this section limiting the amount of retroactive support does not constitute a variance from the guidelines requiring the court to make specific findings under Section 154.130.

(f) Notwithstanding any other provision of this subtitle, the court retains jurisdiction to render an order for retroactive child support in a suit if a petition requesting retroactive child support is filed not later than the fourth anniversary of the date of the child's 18th birthday.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 392, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 821, Sec. 2.14, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1023, Sec. 9, eff; Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 11(a), eff. September 1, 2007.

ANNOTATIONS

Allen v. Porter, No. 01-16-00823-CV, 2017 WL 2255751 (Tex. App.—Houston [1st Dist.] May 23, 2017, no pet.) (mem. op.). An award of retroactive child support is discretionary with the trial court. A reporter's record is necessary to determine whether there has been an abuse of discretion.

In re J.A.J., 283 S.W.3d 495 (Tex. App.—Beaumont 2009, no pet.). The statutory guidelines for calculating child support apply to the calculation of retroactive child support.

Sec. 154.132. APPLICATION OF GUIDELINES TO CHILDREN OF CERTAIN DISABLED OBLIGORS

In applying the child support guidelines for an obligor who has a disability and who is required to pay support for a child who receives benefits as a result of the obligor's disability, the court shall apply the guidelines by determining the amount of child support that would be ordered under the child support guidelines and subtracting from that total the amount of benefits or the value of the benefits paid to or for the child as a result of the obligor's disability.

Added by Acts 1999, 76th Leg., ch. 891, Sec. 1, eff. Sept. 1, 1999.

ANNOTATIONS

In re D.S.H., No. 09-17-00426-CV, 2018 WL 4623402 (Tex. App.—Beaumont Sept. 27, 2018, pet. denied) (mem. op.). The court of appeals directed the trial court to adjust the father's support obligation to account for the value of the disability benefits the child was receiving due to his father's disability. After remand, the trial court adjusted the father's support obligation prospectively, beginning from the date that it rendered the final judgment, but refused to make the adjustment retroactive to the December 2013 temporary order. Subsection 156.401(b) of the Family Code prohibits "trial courts from retroactively modifying temporary support orders to a date that predates the day the parent opposing a support award notifies the other parties to the suit that they are challenging the amount of a temporary award."

In re H.J.W., 302 S.W.3d 511 (Tex. App.—Dallas 2009, no pet.). Although a father was entitled to receive a credit for paying child support when the mother was receiving contemporaneous payments as a result of the father's disability, the father was not entitled to reimbursement from the mother for child support paid.

Sec. 154.133. APPLICATION OF GUIDELINES TO CHILDREN OF OBLIGORS RECEIVING SOCIAL SECURITY

In applying the child support guidelines for an obligor who is receiving social security old age benefits and who is required to pay support for a child who receives benefits as a result of the obligor's receipt of social security old age benefits, the court shall apply the guidelines by determining the amount of child support that would be ordered under the child support guidelines and subtracting from that total the amount of benefits or the value of the benefits paid to or for the child as a result of the obligor's receipt of social security old age benefits.

Added by Acts 2001, 77th Leg., ch. 544, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. MEDICAL SUPPORT AND DENTAL SUPPORT FOR CHILD

Sec. 154.181. MEDICAL SUPPORT ORDER

(a) The court shall render an order for the medical support of the child as provided by this section and Section 154.182 in:

(1) a proceeding in which periodic payments of child support are ordered under this chapter or modified under Chapter 156;

(2) any other suit affecting the parent-child relationship in which the court determines that medical support of the child must be established, modified, or clarified; or

(3) a proceeding under Chapter 159.

(b) Before a hearing on temporary orders or a final order, if no hearing on temporary orders is held, the court shall require the parties to the proceedings to disclose in a pleading or other statement:

(1) if private health insurance is in effect for the child, the identity of the insurance company providing the coverage, the policy number, which parent is responsible for payment of any insurance premium for the coverage, whether the coverage is provided through a parent's employment, and the cost of the premium; or

(2) if private health insurance is not in effect for the child, whether:

(A) the child is receiving medical assistance under Chapter 32, Human Resources Code;

(B) the child is receiving health benefits coverage under the state child health plan under Chapter 62, Health and Safety Code, and the cost of any premium; and

(C) either parent has access to private health insurance at reasonable cost to the obligor.

(c) In rendering temporary orders, the court shall, except for good cause shown, order that any health insurance coverage in effect for the child continue in effect pending the rendition of a final order, except that the court may not require the continuation of any health insurance that is not available to the parent at reasonable cost to the obligor. If there is no health insurance coverage in effect for the child or if the insurance in effect is not available at a reasonable cost to the obligor, the court shall, except for good cause shown, order health care coverage for the child as provided under Section 154.182.

(d) On rendering a final order the court shall:

(1) make specific findings with respect to the manner in which health care coverage is to be provided for the child, in accordance with the priorities identified under Section 154.182; and

(2) except for good cause shown or on agreement of the parties, require the parent ordered to provide health care coverage for the child as provided under Section 154.182 to produce evidence to the court's satisfaction that the parent has applied for or secured health insurance or has otherwise taken necessary action to provide for health care coverage for the child, as ordered by the court.

(e) In this section, "reasonable cost" means the cost of health insurance coverage for a child that does not exceed nine percent of the obligor's annual resources, as described by Section 154.062(b), if the obligor is responsible under a medical support order for the cost of health insurance coverage for only one child. If the obligor is responsible under a medical support order for the cost of health insurance coverage for more than one child, "reasonable cost" means the total cost of health insurance coverage for all children for which the obligor is responsible under a medical support order that does not exceed nine percent of the obligor's annual resources, as described by Section 154.062(b).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 449, Sec. 1, eff. June 5, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 363 (S.B. 303), Sec. 2, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 7, eff. June 19, 2009.

ANNOTATIONS

In re D.P.B., No. 05-17-00185-CV, 2018 WL 3014628 (Tex. App.—Dallas June 15, 2018, no pet.) (mem. op.). The trial court abused its discretion when it ordered the mother to pay cash medical support in the amount of $528 per month when the father did not offer any evidence whether $528 per month was a "reasonable cost" to the mother.

Miles v. Peacock, 229 S.W.3d 384 (Tex. App.—Houston [1st Dist.] 2007, no pet.). As long as child support is payable by the obligor, a trial court has the authority to order the obligor to purchase and maintain a life insurance policy for the child's benefit to cover the child support obligation.

Sec. 154.1815. DENTAL SUPPORT ORDER

(a) In this section, "reasonable cost" means the cost of a dental insurance premium that does not exceed 1.5 percent of the obligor's annual resources, as described by Section 154.062(b), if the obligor is responsible under a dental support order for the cost of dental insurance coverage for only one child. If the obligor is responsible under a dental support order for the cost of dental insurance coverage for more than one child, "reasonable cost" means the total cost of dental insurance coverage for all children for which the obligor is responsible under a dental support order that does not exceed 1.5 percent of the obligor's annual resources, as described by Section 154.062(b).

(b) In a suit affecting the parent-child relationship or in a proceeding under Chapter 159, the court shall render an order for the dental support of the child as provided by this section and Section 154.1825.

(c) Before a hearing on temporary orders, or a final order if no hearing on temporary orders is held, the court shall require the parties to the proceedings to disclose in a pleading or other document whether the child is covered by dental insurance and, if the child is covered, the identity of the insurer providing the coverage, the policy number, which parent is responsible for payment of any insurance premium for the coverage, whether the coverage is provided through a parent's employment, and the cost of the premium. If dental insurance is not in effect for the child, the parties must disclose to the court whether either parent has access to dental insurance at a reasonable cost to the obligor.

(d) In rendering temporary orders, the court shall, except for good cause shown, order that any dental insurance coverage in effect for the child continue in effect pending the rendition of a final order, except that the court may not require the continuation of any dental insurance that is not available to the parent at a reasonable cost to the obligor. If dental insurance coverage is not in effect for the child or if the insurance in effect is not available at a reasonable cost to the obligor, the court shall, except for good cause shown, order dental insurance coverage for the child as provided by Section 154.1825.

(e) On rendering a final order the court shall:

(1) make specific findings with respect to the manner in which dental insurance coverage is to be provided for the child, in accordance with the priorities identified under Section 154.1825; and

(2) except for good cause shown or on agreement of the parties, require the parent ordered to provide dental insurance coverage for the child as provided by Section 154.1825 to produce evidence to the court's satisfaction that the parent has applied for or secured dental insurance or has otherwise taken necessary action to provide for dental insurance coverage for the child, as ordered by the court.

Added by Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 14, eff. September 1, 2018.

Sec. 154.182. HEALTH CARE COVERAGE FOR CHILD

(a) The court shall consider the cost, accessibility, and quality of health insurance coverage available to the parties and shall give priority to health insurance coverage available through the employment of one of the parties if the coverage is available at a reasonable cost to the obligor.

(b) In determining the manner in which health care coverage for the child is to be ordered, the court shall render its order in accordance with the following priorities, unless a party shows good cause why a particular order would not be in the best interest of the child:

(1) if health insurance is available for the child through a parent's employment or membership in a union, trade association, or other organization at reasonable cost, the court shall order that parent to include the child in the parent's health insurance;

(2) if health insurance is not available for the child under Subdivision (1) but is available to a parent at reasonable cost from another source, including the program under Section 154.1826 to provide health insurance in Title IV-D cases, the court may order that parent to provide health insurance for the child; or

(3) if health insurance coverage is not available for the child under Subdivision (1) or (2), the court shall order the obligor to pay the obligee, in addition to any amount ordered under the guidelines for child support, an amount, not to exceed nine percent of the obligor's annual resources, as described by Section 154.062(b), as cash medical support for the child.

(b–1) If the parent ordered to provide health insurance under Subsection (b)(1) or (2) is the obligee, the court shall order the obligor to pay the obligee, as additional child support, an amount equal to the actual cost of health insurance for the child, but not to exceed a reasonable cost to the obligor. In calculating the actual cost of health insurance for the child, if the obligee has other minor dependents covered under the same health insurance plan, the court shall divide the total cost to the obligee for the insurance by the total number of minor dependents, including the child covered under the plan.

(b–2) If the court finds that neither parent has access to private health insurance at a reasonable cost to the obligor, the court shall order the parent awarded the exclusive right to designate the child's primary residence or, to the extent permitted by law, the other parent to apply immediately on behalf of the child for participation in a government medical assistance program or health plan. If the child participates in a government medical assistance program or health plan, the court shall order cash medical support under Subsection (b)(3).

(b–3) An order requiring the payment of cash medical support under Subsection (b)(3) must allow the obligor to discontinue payment of the cash medical support if:

(1) health insurance for the child becomes available to the obligor at a reasonable cost; and

(2) the obligor:

(A) enrolls the child in the insurance plan; and

(B) provides the obligee and, in a Title IV-D case, the Title IV-D agency, the information required under Section 154.185.

(c) In this section:

(1) "Accessibility" means the extent to which health insurance coverage for a child provides for the availability of medical care within a reasonable traveling distance and time from the child's primary residence, as determined by the court.

(2) "Reasonable cost" has the meaning assigned by Section 154.181(e).

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 767, Sec. 37, eff. June 19, 2009.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 550, Sec. 2, eff. June 2, 1997; Acts 2001, 77th Leg., ch. 449, Sec. 2, eff. June 5, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 363 (S.B. 303), Sec. 3, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 363 (S.B. 303), Sec. 4, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 620 (H.B. 448), Sec. 5, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 8, eff. June 19, 2009. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 8, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 37, eff. June 19, 2009.

ANNOTATIONS

In re D.P.B., No. 05-17-00185-CV, 2018 WL 3014628 (Tex. App.—Dallas June 15, 2018, no pet.) (mem. op.). The trial court abused its discretion when it ordered the mother to pay cash medical support in the amount of $528 per month when the father did not offer any evidence whether $528 per month was a "reasonable cost" to the mother.

In re A.T., No. 05-16-00539-CV, 2017 WL 2351084 (Tex. App.—Dallas May 31, 2017, no pet.) (mem. op.). The trial court abused its discretion by ordering the obligor to pay child support of $2,917 per month and to provide medical support where no evidence was admitted at trial and, upon request, the trial court took judicial notice of the temporary orders and granted obligee's request that the same provisions relating to child support and medical support be included in the final decree.

In re M.M.S., 256 S.W.3d 470 (Tex. App.—Dallas 2008, no pet.). Although a father later gained employment, a modification was not necessary to change the children from the mother's health insurance to the father's health insurance because nothing in this section requires a trial court to modify health insurance coverage automatically merely because an obligor obtains health insurance coverage.

Sec. 154.1825. Dental Care Coverage for Child

(a) In this section:

(1) "Accessibility" means the extent to which dental insurance coverage for a child provides for the availability of dental care within a reasonable traveling distance and time from the child's primary residence, as determined by the court.

(2) "Reasonable cost" has the meaning assigned by Section 154.1815(a).

(b) The court shall consider the cost, accessibility, and quality of dental insurance coverage available to the parties and shall give priority to dental insurance coverage available through the employment of one of the parties if the coverage is available at a reasonable cost to the obligor.

(c) In determining the manner in which dental care coverage for the child is to be ordered, the court shall render its order in accordance with the following priorities, unless a party shows good cause why a particular order is not in the best interest of the child:

(1) if dental insurance is available for the child through a parent's employment or membership in a union, trade association, or other organization at reasonable cost, the court shall order that parent to include the child in the parent's dental insurance; or

(2) if dental insurance is not available for the child under Subdivision (1) but is available to a parent from another source and at a reasonable cost, the court may order that parent to provide dental insurance for the child.

(d) If the parent ordered to provide dental insurance under Subsection (c)(1) or (2) is the obligee, the court shall order the obligor to pay the obligee, as additional child support, an amount equal to the actual cost of dental insurance for the child, but not to exceed a reasonable cost to the obligor. In calculating the actual cost of dental insurance for the child, if the obligee has other minor dependents covered under the same dental insurance plan, the court shall divide the total cost to the obligee for the insurance by the total number of minor dependents, including the child covered under the plan.

Added by Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 15, eff. September 1, 2018.

Sec. 154.1826. Health Care Program for Certain Children in Title IV-D Cases

(a) In this section:

(1) "Health benefit plan issuer" means an insurer, health maintenance organization, or other entity authorized to provide health benefits coverage under the laws of this state.

(2) "Health care provider" means a physician or other person who is licensed, certified, or otherwise authorized to provide a health care service in this state.

(3) "Program" means the child health care program developed under this section.

(4) "Reasonable cost" has the meaning assigned by Section 154.181(e).

(5) "Third-party administrator" means a person who is not a health benefit plan issuer or agent of a health benefit plan issuer and who provides administrative services for the program, including processing enrollment of eligible children in the program and processing premium payments on behalf of the program.

(b) In consultation with the Texas Department of Insurance, the Health and Human Services Commission, and representatives of the insurance industry in this state, the Title IV-D agency shall develop and implement a statewide program to address the health care needs of children in Title IV-D cases for whom health insurance is not available to either parent at reasonable cost under Section 154.182(b)(1) or under Section 154.182(b)(2) from a source other than the program.

(c) The director of the Title IV-D agency may establish an advisory committee to consult with the director regarding the implementation and operation of the program. If the director establishes an advisory committee, the director may appoint any of the following persons to the advisory committee:

(1) representatives of appropriate public and private entities, including state agencies concerned with health care management;

(2) members of the judiciary;

(3) members of the legislature; and

(4) representatives of the insurance industry.

(d) The principal objective of the program is to provide basic health care services, including office visits with health care providers, hospitalization, and diagnostic and emergency services, to eligible children in Title IV-D cases at reasonable cost to the parents obligated by court order to provide medical support for the children.

(e) The Title IV-D agency may use available private resources, including gifts and grants, in administering the program.

(f) The Title IV-D agency shall adopt rules as necessary to implement the program. The Title IV-D agency shall consult with the Texas Department of Insurance and the Health and Human Services Commission in establishing policies and procedures for the administration of the program and in determining appropriate benefits to be provided under the program.

(g) A health benefit plan issuer that participates in the program may not deny health care coverage under the program to eligible children because of preexisting conditions or chronic illnesses. A child who is determined to be eligible for coverage under the program continues to be eligible until the termination of the parent's duty to pay child support as specified by Section 154.006. Enrollment of a child in the program does not preclude the subsequent enrollment of the child in another health care plan that becomes available to the child's parent at reasonable cost, including a health care plan available through the parent's employment or the state child health plan under Chapter 62, Health and Safety Code.

(h) The Title IV-D agency shall contract with an independent third-party administrator to provide necessary administrative services for operation of the program.

(i) A person acting as a third-party administrator under Subsection (h) is not considered an administrator for purposes of Chapter 4151, Insurance Code.

(j) The Title IV-D agency shall solicit applications for participation in the program from health benefit plan issuers that meet requirements specified by the agency. Each health benefit plan issuer that participates in the program must hold a certificate of authority issued by the Texas Department of Insurance.

(k) The Title IV-D agency shall promptly notify the courts of this state when the program has been implemented and is available to provide for the health care needs of children described by Subsection (b). The notification must specify a date beginning on which children may be enrolled in the program.

(l) On or after the date specified in the notification required by Subsection (k), a court that orders health care coverage for a child in a Title IV-D case shall order that the child be enrolled in the program authorized by this section unless other health insurance is available for the child at reasonable cost, including the state child health plan under Chapter 62, Health and Safety Code.

(m) Payment of premium costs for the enrollment of a child in the program may be enforced by the Title IV-D agency against the obligor by any means available for the enforcement of a child support obligation, including income withholding under Chapter 158.

(n) The program is not subject to any provision of the Insurance Code or other law that requires coverage or the offer of coverage of a health care service or benefit.

(o) Any health information obtained by the program, or by a third-party administrator providing program services, that is subject to the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) or Chapter 181, Health and Safety Code, is confidential and not open to public inspection. Any personally identifiable financial information or supporting documentation of a parent whose child is enrolled in the program that is obtained by the program, or by a third-party administrator providing program services, is confidential and not open to public inspection.

Added by Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 9, eff. June 19, 2009.

Sec. 154.1827. ADMINISTRATIVE ADJUSTMENT OF MEDICAL SUPPORT ORDER

(a) In each Title IV-D case in which a medical support order requires that a child be enrolled in a health care program under Section 154.1826, the Title IV-D agency may administratively adjust the order as necessary on an annual basis to reflect changes in the amount of premium costs associated with the child's enrollment.

(b) The Title IV-D agency shall provide notice of the administrative adjustment to the obligor and the clerk of the court that rendered the order.

Added by Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 9, eff. June 19, 2009.

Sec. 154.183. MEDICAL AND DENTAL SUPPORT ADDITIONAL SUPPORT DUTY OF OBLIGOR

(a) An amount that an obligor is ordered to pay as medical support or dental support for the child under this chapter, including the costs of health insurance coverage or cash medical support under Section 154.182 and the costs of dental insurance under Section 154.1825:

(1) is in addition to the amount that the obligor is required to pay for child support under the guidelines for child support;

(2) is a child support obligation; and

(3) may be enforced by any means available for the enforcement of child support, including withholding from earnings under Chapter 158.

(b) If the court finds and states in the child support order that the obligee will maintain health insurance coverage, dental insurance coverage, or both, for the child at the obligee's expense, the court shall increase the amount of child support to be paid by the obligor in an amount not exceeding the actual cost to the obligee for maintaining the coverage, as provided under Sections 154.182(b–1) and 154.1825(d).

(c) As additional child support, the court shall allocate between the parties, according to their circumstances:

(1) the reasonable and necessary health care expenses, including vision and dental expenses, of the child that are not reimbursed by health or dental insurance or are not otherwise covered by the amount of cash medical support ordered under Section 154.182; and

(2) amounts paid by either party as deductibles or copayments in obtaining health care or dental care services for the child covered under a health insurance or dental insurance policy.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 363 (S.B. 303), Sec. 5, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 620 (H.B. 448), Sec. 6, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 9.002, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 10, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 16, eff. September 1, 2018.

Sec. 154.184. EFFECT OF ORDER

(a) Receipt of a medical support order requiring that health insurance be provided for a child or a dental support order requiring that dental insurance be provided for a child shall be considered a change in the family circumstances of the employee or member, for health insurance purposes and dental insurance purposes, equivalent to the birth or adoption of a child.

(b) If the employee or member is eligible for dependent health coverage or dependent dental coverage, the employer shall automatically enroll the child for the first 31 days after the receipt of the order or notice of the medical support order or the dental support order under Section 154.186 on the same terms and conditions as apply to any other dependent child.

(c) The employer shall notify the insurer of the automatic enrollment.

(d) During the 31-day period, the employer and insurer shall complete all necessary forms and procedures to make the enrollment permanent or shall report in accordance with this subchapter the reasons the coverage cannot be made permanent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 4.03, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 11, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 17, eff. September 1, 2018.

Sec. 154.185. PARENT TO FURNISH INFORMATION

(a) The court shall order a parent providing health insurance or dental insurance to furnish to either the obligee, obligor, or child support agency the following information not later than the 30th day after the date the notice of rendition of the order is received:

(1) the social security number of the parent;

(2) the name and address of the parent's employer;

(3) with regard to health insurance:

(A) whether the employer is self-insured or has health insurance available;

(B) proof that health insurance has been provided for the child;

(C) if the employer has health insurance available, the name of the health insurance carrier, the number of the policy, a copy of the policy and schedule of benefits, a health insurance membership card, claim forms, and any other information necessary to submit a claim; and

(D) if the employer is self-insured, a copy of the schedule of benefits, a membership card, claim forms, and any other information necessary to submit a claim; and

(4) with regard to dental insurance:

(A) whether the employer is self-insured or has dental insurance available;

(B) proof that dental insurance has been provided for the child;

(C) if the employer has dental insurance available, the name of the dental insurance carrier, the number of the policy, a copy of the policy and schedule of benefits, a dental insurance membership card, claim forms, and any other information necessary to submit a claim; and

(D) if the employer is self-insured, a copy of the schedule of benefits, a membership card, claim forms, and any other information necessary to submit a claim.

(b) The court shall also order a parent providing health insurance or dental insurance to furnish the obligor, obligee, or child support agency with additional information regarding the health insurance coverage or dental insurance coverage not later than the 15th day after the date the information is received by the parent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 10, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 18, eff. September 1, 2018.

Sec. 154.186. NOTICE TO EMPLOYER CONCERNING MEDICAL SUPPORT OR DENTAL SUPPORT

(a) The obligee, obligor, or a child support agency of this state or another state may send to the employer a copy of the order requiring an employee to provide health insurance coverage or dental insurance coverage for a child or may include notice of the medical support order or dental support order in an order or writ of withholding sent to the employer in accordance with Chapter 158.

(b) In an appropriate Title IV-D case, the Title IV-D agency of this state or another state shall send to the employer the national medical support notice required under Part D, Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.), as amended. The notice may be used in any other suit in which an obligor is ordered to provide health insurance coverage for a child.

(c) The Title IV-D agency by rule shall establish procedures consistent with federal law for use of the national medical support notice and may prescribe forms for the efficient use of the notice. The agency shall provide the notice and forms, on request, to obligees, obligors, domestic relations offices, friends of the court, and attorneys.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 4.04, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 12, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 120, Sec. 1, eff. July 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 12, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 19, eff. September 1, 2018. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 20, eff. September 1, 2018.

Sec. 154.187. DUTIES OF EMPLOYER

(a) An order or notice under this subchapter to an employer directing that health insurance coverage or dental insurance coverage be provided to a child of an employee or member is binding on a current or subsequent employer on receipt without regard to the date the order was rendered. If the employee or member is eligible for dependent health coverage or dental coverage for the child, the employer shall immediately enroll the child in a health insurance plan or dental insurance plan regardless of whether the employee is enrolled in the plan. If dependent coverage is not available to the employee or member through the employer's health insurance plan or dental insurance plan or enrollment cannot be made permanent or if the employer is not responsible or otherwise liable for providing such coverage, the employer shall provide notice to the sender in accordance with Subsection (c).

(b) If additional premiums are incurred as a result of adding the child to the health insurance plan or the dental insurance plan, the employer shall deduct the health insurance premium or the dental insurance premium from the earnings of the employee in accordance with Chapter 158 and apply the amount withheld to payment of the insurance premium.

(c) An employer who has received an order or notice under this subchapter shall provide to the sender, not later than the 40th day after the date the employer receives the order or notice, a statement that the child:

(1) has been enrolled in the employer's health insurance plan or dental insurance plan, or is already enrolled in another health insurance plan or dental insurance plan in accordance with a previous child support, medical support, or dental support order to which the employee is subject; or

(2) cannot be enrolled or cannot be enrolled permanently in the employer's health insurance plan or dental insurance plan and provide the reason why coverage or permanent coverage cannot be provided.

(d) If the employee ceases employment or if the health insurance coverage or dental insurance coverage lapses, the employer shall provide to the sender, not later than the 15th day after the date of the termination of employment or the lapse of the coverage, notice of the termination or lapse and of the availability of any conversion privileges.

(e) On request, the employer shall release to the sender information concerning the available health insurance coverage or dental insurance coverage, including the name of the health insurance carrier or dental insurance carrier, the policy number, a copy of the policy and schedule of benefits, a health insurance or dental insurance membership card, and claim forms.

(f) In this section, "sender" means the person sending the order or notice under Section 154.186.

(g) An employer who fails to enroll a child, fails to withhold or remit premiums or cash medical support, or discriminates in hiring or employment on the basis of a medical support order or notice or a dental support order or notice under this subchapter shall be subject to the penalties and fines in Subchapter C, Chapter 158.

(h) An employer who receives a national medical support notice under Section 154.186 shall comply with the requirements of the notice.

(i) The notices required by Subsections (c) and (d) must be provided to the sender by first class mail, unless the sender is the Title IV-D agency. Notices to the Title IV-D agency may be provided electronically or via first class mail.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 4.05, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 120, Sec. 2, eff. July 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 11, eff. June 19, 2009. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 1, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 4, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 21, eff. September 1, 2018.

Sec. 154.188. FAILURE TO PROVIDE OR PAY FOR REQUIRED HEALTH INSURANCE OR DENTAL INSURANCE

A parent ordered to provide health insurance or dental insurance or to pay the other parent additional child support for the cost of health insurance or dental insurance who fails to do so is liable for:

(1) necessary medical expenses or dental expenses of the child, without regard to whether the expenses would have been paid if health insurance or dental insurance had been provided; and

(2) the cost of health insurance premiums, dental insurance premiums, or contributions, if any, paid on behalf of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 295, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 3, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 22, eff. September 1, 2018.

ANNOTATIONS

In re Marriage of Grossnickle, 115 S.W.3d 238 (Tex. App.—Texarkana 2003, no pet.). Medical expenses of a child must be "necessary" in order to require payment of them.

Sec. 154.189. NOTICE OF TERMINATION OR LAPSE OF INSURANCE COVERAGE

(a) An obligor ordered to provide health insurance coverage or dental insurance coverage for a child must notify the obligee and any child support agency enforcing a support obligation against the obligor of the:

(1) termination or lapse of health insurance coverage or dental insurance coverage for the child not later than the 15th day after the date of a termination or lapse; and

(2) availability of additional health insurance or dental insurance to the obligor for the child after a termination or lapse of coverage not later than the 15th day after the date the insurance becomes available.

(b) If termination of coverage results from a change of employers, the obligor, the obligee, or the child support agency may send the new employer a copy of the order requiring the employee to provide health insurance or dental insurance for a child or notice of the medical support order or the dental support order as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 14, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 23, eff. September 1, 2018.

Sec. 154.190. REENROLLING CHILD FOR INSURANCE COVERAGE

After health insurance or dental insurance has been terminated or has lapsed, an obligor ordered to provide health insurance coverage or dental insurance coverage for the child must enroll the child in a health insurance plan or a dental insurance plan at the next available enrollment period.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 24, eff. September 1, 2018.

Sec. 154.191. REMEDY NOT EXCLUSIVE

(a) This subchapter does not limit the rights of the obligor, obligee, local domestic relations office, or Title IV-D agency to enforce, modify, or clarify the medical support order or dental support order.

(b) This subchapter does not limit the authority of the court to render or modify a medical support order or dental support order to provide for payment of uninsured health expenses, health care costs, health insurance premiums, uninsured dental expenses, dental costs, or dental insurance premiums in a manner consistent with this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 12, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 25, eff. September 1, 2018.

Sec. 154.192. CANCELLATION OR ELIMINATION OF INSURANCE COVERAGE FOR CHILD

Unless the employee or member ceases to be eligible for dependent coverage, or the employer has eliminated dependent health coverage or dental coverage for all of the employer's employees or members, the employer may not cancel or eliminate coverage of a child enrolled under this subchapter until the employer is provided satisfactory written evidence that:

(1) the court order or administrative order requiring the coverage is no longer in effect; or

(2) the child is enrolled in comparable insurance coverage or will be enrolled in comparable coverage that will take effect not later than the effective date of the cancellation or elimination of the employer's coverage.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 4.06, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 26, eff. September 1, 2018.

Sec. 154.193. MEDICAL SUPPORT ORDER OR DENTAL SUPPORT ORDER NOT QUALIFIED

(a) If a plan administrator or other person acting in an equivalent position determines that a medical support order or dental support order issued under this subchapter does not qualify for enforcement under federal law, the tribunal may, on its own motion or the motion of a party, render an order that qualifies for enforcement under federal law.

(b) The procedure for filing a motion for enforcement of a final order applies to a motion under this section. Service of citation is not required, and a person is not entitled to a jury in a proceeding under this section.

(c) The employer or plan administrator is not a necessary party to a proceeding under this section.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 15, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 27, eff. September 1, 2018. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 28, eff. September 1, 2018.

SUBCHAPTER E. LOCAL CHILD SUPPORT REGISTRY

Sec. 154.241. LOCAL REGISTRY

(a) A local registry shall receive a court-ordered child support payment or a payment otherwise authorized by law and shall forward the payment, as appropriate, to the Title IV-D agency, local domestic relations office, or obligee within two working days after the date the local registry receives the payment.

(b) A local registry may not require an obligor, obligee, or other party or entity to furnish a certified copy of a court order as a condition of processing child support payments and shall accept as sufficient authority to process the payments a photocopy, facsimile copy, or conformed copy of the court's order.

(c) A local registry shall include with each payment it forwards to the Title IV-D agency the date it received the payment and the withholding date furnished by the employer.

(d) A local registry shall accept child support payments made by personal check, money order, or cashier's check. A local registry may refuse payment by personal check if a pattern of abuse regarding the use of personal checks has been established. Abuse includes checks drawn on insufficient funds, abusive or offensive language written on the check, intentional mutilation of the instrument, or other actions that delay or disrupt the registry's operation.

(e) Subject to Section 154.004, at the request of an obligee, a local registry shall redirect and forward a child support payment to an address and in care of a person or entity designated by the obligee. A local registry may require that the obligee's request be in writing or be made on a form provided by the local registry for that purpose, but may not charge a fee for receiving the request or redirecting the payments as requested.

(f) A local registry may accept child support payments made by credit card, debit card, or automatic teller machine card.

(g) Notwithstanding any other law, a private entity may perform the duties and functions of a local registry under this section either under a contract with a county commissioners court or domestic relations office executed under Section 204.002 or under an appointment by a court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 42, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 645, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 740 (H.B. 2668), Sec. 2, eff. June 17, 2005.

Sec. 154.242. PAYMENT OR TRANSFER OF CHILD SUPPORT PAYMENTS BY ELECTRONIC FUNDS TRANSFER

(a) A child support payment may be made by electronic funds transfer to:

(1) the Title IV-D agency;

(2) a local registry if the registry agrees to accept electronic payment; or

(3) the state disbursement unit.

(b) A local registry may transmit child support payments to the Title IV-D agency by electronic funds transfer. Unless support payments are required to be made to the state disbursement unit, an obligor may make payments, with the approval of the court entering the order, directly to the bank account of the obligee by electronic transfer and provide verification of the deposit to the local registry. A local registry in a county that makes deposits into personal bank accounts by electronic funds transfer as of April 1, 1995, may transmit a child support payment to an obligee by electronic funds transfer if the obligee maintains a bank account and provides the local registry with the necessary bank account information to complete electronic payment.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 597, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 702, Sec. 2, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1053, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 10, eff. Sept. 1, 1999.

Sec. 154.243. PRODUCTION OF CHILD SUPPORT PAYMENT RECORD

The Title IV-D agency, a local registry, or the state disbursement unit may comply with a subpoena or other order directing the production of a child support payment record by sending a certified copy of the record or an affidavit regarding the payment record to the court that directed production of the record.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 10, eff. Sept. 1, 1999.

SUBCHAPTER F. SUPPORT FOR A MINOR OR ADULT DISABLED CHILD

Sec. 154.301. DEFINITIONS

In this subchapter:

(1) "Adult child" means a child 18 years of age or older.

(2) "Child" means a son or daughter of any age.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

RESOURCES

Keith D. Maples, *Special Needs Children's Issues*, Marriage Dissolution (2012).

Karen L. Marvel & Andrew Ross, *Child Support and the Special Needs Child*, State Bar Col. Summer School (2012).

Jacqueline Smith, *Drafting Unique Child Support Provisions: Above Guidelines, Special Needs Child, and 154.300*, Adv. Fam. L. Drafting (2017).

Sec. 154.302. COURT-ORDERED SUPPORT FOR DISABLED CHILD

(a) The court may order either or both parents to provide for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that:

(1) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support; and

(2) the disability exists, or the cause of the disability is known to exist, on or before the 18th birthday of the child.

(b) A court that orders support under this section shall designate a parent of the child or another person having physical custody or guardianship of the child under a court order to receive the support for the child. The court may designate a child who is 18 years of age or older to receive the support directly.

(c) Notwithstanding Subsection (b), a court that orders support under this section for an adult child with a disability may designate a special needs trust and provide that the support may be paid directly to the trust for the benefit of the adult child. The court shall order that support payable to a special needs trust under this subsection be paid directly to the trust and may not order the support be paid to the state disbursement unit. This subsection does not apply in a Title IV-D case.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 1173, Sec. 1, eff. Sept. 1, 1997. Acts 2019, 86th Leg., H.B. 558, Sec. 1, eff. Sept. 1, 2019.

Section 2 of Acts 2019, 86th Leg., H.B. 558 states—

"The change in law made by this Act constitutes a material and substantial change of circumstances under Section 156.401, Family Code, sufficient to warrant modification of a court order or a portion of a decree that provides for the support of a child rendered before the effective date of this Act."

ANNOTATIONS

In re D.C., 549 S.W.3d 136 (Tex. 2018). The Texas Supreme Court denied the petition for review of an order that required a parent to pay child support for an adult child indefinitely. The adult son had attained the age of majority, lived on his own in a dormitory, had graduated from college with a double major, and had begun pursuing a master's degree. In an opinion concurring in the denial of the petition for review, Justice Guzman noted that the Family Code does not define "mental or physical disability or specify the type of proof required to meet the statutory standard" and stated that the supreme court "should, in an appropriate case, give the lower courts guidance regarding how 'detailed and specific' the evidence must be to meet section 154.302's standards."

Sec. 154.303. STANDING TO SUE

(a) A suit provided by this subchapter may be filed only by:

(1) a parent of the child or another person having physical custody or guardianship of the child under a court order; or

(2) the child if the child:

(A) is 18 years of age or older;

(B) does not have a mental disability; and

(C) is determined by the court to be capable of managing the child's financial affairs.

(b) The parent, the child, if the child is 18 years of age or older, or other person may not transfer or assign the cause of action to any person, including a governmental or private entity or agency, except for an assignment made to the Title IV-D agency under Section 231.104 or in the provision of child support enforcement services under Section 159.307.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 1173, Sec. 2, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 2, eff. September 1, 2011.

ANNOTATIONS

In re C.J.N.-S, 540 S.W.3d 589 (Tex. 2018) (per curiam). The phrase "having physical custody or guardianship of the child under a court order" in subsection 154.303(a)(1) modifies "another person" but not "parent." Accordingly, a parent has standing to file suit to obtain child support for an adult disabled child without court-ordered physical custody or guardianship.

In re Sisk, No. 14-13-00785-CV, 2014 WL 5492804 (Tex. App.—Houston [14th Dist.] Oct. 30, 2014, pet. denied) (mem. op.). A parent's prior divorce did not preclude his adult child from maintaining an action for support.

Attorney General of Texas v. Crawford, 322 S.W.3d 858 (Tex. App.—Houston [1st Dist.] 2010, pet. denied). Only the persons specified in this section may file suit to obtain court-ordered support for adult disabled children. Because the Attorney General is not one of the specified parties, this section requires a specific assignment to the Attorney General to have standing to file a suit to modify child support.

Sec. 154.304. GENERAL PROCEDURE

Except as otherwise provided by this subchapter, the substantive and procedural rights and remedies in a suit affecting the parent-child relationship relating to the establishment, modification, or enforcement of a child support order apply to a suit filed and an order rendered under this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 154.305. SPECIFIC PROCEDURES

(a) A suit under this subchapter may be filed:

(1) regardless of the age of the child; and

(2) as an independent cause of action or joined with any other claim or remedy provided by this code.

(b) If no court has continuing, exclusive jurisdiction of the child, an action under this subchapter may be filed as an original suit affecting the parent-child relationship.

(c) If there is a court of continuing, exclusive jurisdiction, an action under this subchapter may be filed as a suit for modification as provided by Chapter 156.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 154.306. AMOUNT OF SUPPORT AFTER AGE 18

In determining the amount of support to be paid after a child's 18th birthday, the specific terms and conditions of that support, and the rights and duties of both parents with respect to the support of the child, the court shall determine and give special consideration to:

(1) any existing or future needs of the adult child directly related to the adult child's mental or physical disability and the substantial care and personal supervision directly required by or related to that disability;

(2) whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child;

(3) the financial resources available to both parents for the support, care, and supervision of the adult child; and

(4) any other financial resources or other resources or programs available for the support, care, and supervision of the adult child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

RESOURCES

Keith D. Maples & Pi-Yi Mayo, *Child Support for Children with Disabilities*, Adv. Fam. L. (2010).

Sec. 154.307. MODIFICATION AND ENFORCEMENT

An order provided by this subchapter may contain provisions governing the rights and duties of both parents with respect to the support of the child and may be modified or enforced in the same manner as any other order provided by this title.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 154.308. REMEDY NOT EXCLUSIVE

(a) This subchapter does not affect a parent's:

(1) cause of action for the support of a disabled child under any other law; or

(2) ability to contract for the support of a disabled child.

(b) This subchapter does not affect the substantive or procedural rights or remedies of a person other than a parent, including a governmental or private entity or agency, with respect to the support of a disabled child under any other law.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 154.309. POSSESSION OF OR ACCESS TO ADULT DISABLED CHILD

(a) A court may render an order for the possession of or access to an adult disabled child that is appropriate under the circumstances.

(b) Possession of or access to an adult disabled child is enforceable in the manner provided by Chapter 157. An adult disabled child may refuse possession or access if the adult disabled child is mentally competent.

(c) A court that obtains continuing, exclusive jurisdiction of a suit affecting the parent-child relationship involving a disabled person who is a child retains continuing, exclusive jurisdiction of subsequent proceedings involving the person, including proceedings after the person is an adult. Notwithstanding this subsection and any other law, a probate court may exercise jurisdiction in a guardianship proceeding for the person after the person is an adult.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 43, eff. Sept. 1, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 453 (H.B. 585), Sec. 1, eff. June 16, 2007.

RESOURCES

Keith D. Maples, *Special Needs Children's Issues*, Marriage Dissolution (2012).

Keith D. Maples, *From the Family Law Practitioner's Perspective: Planning for the Child with Special Needs during Divorce and SAPCR Proceedings*, Innovations—Breaking Boundaries in Custody Litigation (2019).

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. CONTINUING, EXCLUSIVE JURISDICTION

Sec. 155.001. ACQUIRING CONTINUING, EXCLUSIVE JURISDICTION

(a) Except as otherwise provided by this section, a court acquires continuing, exclusive jurisdiction over the matters provided for by this title in connection with a child on the rendition of a final order.

(b) The following final orders do not create continuing, exclusive jurisdiction in a court:

(1) a voluntary or involuntary dismissal of a suit affecting the parent-child relationship;

(2) in a suit to determine parentage, a final order finding that an alleged or presumed father is not the father of the child, except that the jurisdiction of the court is not affected if the child was subject to the jurisdiction of the court or some other court in a suit affecting the parent-child relationship before the commencement of the suit to adjudicate parentage; and

(3) a final order of adoption, after which a subsequent suit affecting the child must be commenced as though the child had not been the subject of a suit for adoption or any other suit affecting the parent-child relationship before the adoption.

(c) If a court of this state has acquired continuing, exclusive jurisdiction, no other court of this state has jurisdiction of a suit with regard to that child except as provided by this chapter, Section 103.001(b), or Chapter 262.

(d) Unless a final order has been rendered by a court of continuing, exclusive jurisdiction, a subsequent suit shall be commenced as an original proceeding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.19, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 821, Sec. 2.15, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 10, eff. September 1, 2015.

ANNOTATIONS

In re Ron, ___ S.W.3d ___, No. 14-18-00711-CV, 2018 WL 5290024 (Tex. App.—Houston [14th Dist.] Oct. 25, 2018, orig. proceeding). Trial court issued an order compelling arbitration. Wife filed mandamus arguing that the family court, which issued her divorce decree, acquired continuing, exclusive jurisdiction. The court held the family court had jurisdiction—when one court has continuing and exclusive jurisdiction over a matter, any order or judgment issued by another court pertaining to the same matter is void.

In re E.W.N., No. 08-13-00345-CV, 2015 WL 5047612 (Tex. App.—El Paso Aug. 26, 2015). A father, who appealed from the original order awarding the mother exclusive right to determine the child's residence and child support, could, during the pendency of appeal and as appropriate remedy upon alleged changed circumstances in four months since entry of original order, move to abate the appeal and remand the matter back to the trial court for an emergency hearing to protect the child, as alternative to impermissible filing of a new pleading at trial court level seeking to modify the original order; the appellate court could then review the specific circumstances in deciding whether to grant the motion. The appellate court's exclusive plenary authority over causes on appeal superseded the trial court's continuing jurisdiction over issues relating to child custody and support, thus precluding the father's petition to modify child custody and support order during the pendency of his appeal from the original order that awarded the mother the exclusive right to determine child's residence and child support, even if circumstances had changed in the four months since entry of the original order.

In re Thompson, 434 S.W.3d 624, 628 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding). A trial court had jurisdiction over a mother's suit for support of an adult disabled child, following entry of the final divorce decree, where no statutory provision for loss of jurisdiction applied, and the court retained jurisdiction to hear the suit after the father had discharged his child support obligation under the divorce decree.

Huey v. Huey, 200 S.W.3d 851 (Tex. App.—Dallas 2006, no pet.). A mother waived her right to transfer a SAPCR modification to a county outside the geographical restriction set forth in the parties' agreed divorce decree. Thus, the mother could not arbitrarily move to a county not included within the decree and obtain jurisdiction there because of her bad conduct.

Urbish v. James, 688 S.W.2d 230 (Tex. App.—Houston [14th Dist.] 1985, orig. proceeding). The court that divorced the parties was not the court of continuing, exclusive jurisdiction over a personal injury suit filed by a child's mother in his behalf because a personal injury suit is not a SAPCR.

Sec. 155.002. RETAINING CONTINUING, EXCLUSIVE JURISDICTION

Except as otherwise provided by this subchapter, a court with continuing, exclusive jurisdiction retains jurisdiction of the parties and matters provided by this title.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.20, eff. Sept. 1, 1999.

ANNOTATIONS

Huey v. Huey, 200 S.W.3d 851 (Tex. App.—Dallas 2006, no pet.). A mother waived her right to transfer a SAPCR modification to a county outside the geographical restriction set forth in the parties' agreed divorce decree. Thus, the mother could not arbitrarily move to a county not included within the decree and obtain jurisdiction there because of her bad conduct.

Sec. 155.003. EXERCISE OF CONTINUING, EXCLUSIVE JURISDICTION

(a) Except as otherwise provided by this section, a court with continuing, exclusive jurisdiction may exercise its jurisdiction to modify its order regarding managing conservatorship, possessory conservatorship, possession of and access to the child, and support of the child.

(b) A court of this state may not exercise its continuing, exclusive jurisdiction to modify managing conservatorship if:

(1) the child's home state is other than this state; or

(2) modification is precluded by Chapter 152.

(c) A court of this state may not exercise its continuing, exclusive jurisdiction to modify possessory conservatorship or possession of or access to a child if:

(1) the child's home state is other than this state and all parties have established and continue to maintain their principal residence outside this state; or

(2) each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction of the suit.

(d) A court of this state may not exercise its continuing, exclusive jurisdiction to modify its child support order if modification is precluded by Chapter 159.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 155.004. LOSS OF CONTINUING, EXCLUSIVE JURISDICTION

(a) A court of this state loses its continuing, exclusive jurisdiction to modify its order if:

(1) an order of adoption is rendered **by another** ~~after the~~ court **in an original suit filed as described by Section 103.001(b)** ~~acquires continuing, exclusive jurisdiction of the suit~~;

(2) the parents of the child have remarried each other after the dissolution of a previous marriage between them and file a suit for the dissolution of their subsequent marriage combined with a suit affecting the parent-child relationship as if there had not been a prior court with continuing, exclusive jurisdiction over the child; or

(3) another court assumed jurisdiction over a suit and rendered a final order based on incorrect information received from the vital statistics unit that there was no court of continuing, exclusive jurisdiction.

(b) This section does not affect the power of the court to enforce its order for a violation that occurred before the time continuing, exclusive jurisdiction was lost under this section.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 8, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.050, eff. April 2, 2015. Acts 2019, 86th Leg., H.B. 1854, Sec. 1, eff. Sept. 1, 2019.

Section 2 of Acts 2019, 86th Leg., H.B. 1854 states—

"(a) The change in law made by this Act applies only to an order of adoption rendered on or after the effective date of this Act.

"(b) Notwithstanding Subsection (a) of this section, an order of adoption rendered in a suit filed as described by Section 103.001(b), Family Code, on or after September 1, 2015, but before the effective date of this Act by a court that had jurisdiction under that section to render the order or adoption regardless of whether another court had continuing, exclusive jurisdiction under Chapter 155, Family Code, is a final order and is not subject to an appeal on the basis that the court rendering the order of adoption did not have continuing, exclusive jurisdiction at the time the adoption order was rendered."

ANNOTATIONS

Osteen v. Osteen, 999 S.W.2d 28 (Tex. App.—Houston [14th Dist.] 1999, no pet.). A trial court lost continuing, exclusive jurisdiction over divorce and child-related issues when the parties remarried by entering into a common-law marriage.

Sec. 155.005. JURISDICTION PENDING TRANSFER

(a) During the transfer of a suit from a court with continuing, exclusive jurisdiction, the transferring court retains jurisdiction to render temporary orders.

(b) The jurisdiction of the transferring court terminates on the docketing of the case in the transferee court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Bigham v. Dempster, 901 S.W.2d 424 (Tex. 1995, orig. proceeding). "Docketing" occurs when the transferee court receives a certified copy of the transfer order and asserts jurisdiction or when all court files have been filed, whichever occurs first.

SUBCHAPTER B. IDENTIFICATION OF COURT OF CONTINUING, EXCLUSIVE JURISDICTION

Sec. 155.101. REQUEST FOR IDENTIFICATION OF COURT OF CONTINUING, EXCLUSIVE JURISDICTION

(a) The petitioner or the court shall request from the vital statistics unit identification of the court that last had continuing, exclusive jurisdiction of the child in a suit unless:

(1) the petition alleges that no court has continuing, exclusive jurisdiction of the child and the issue is not disputed by the pleadings; or

(2) the petition alleges that the court in which the suit or petition to modify has been filed has acquired and retains continuing, exclusive jurisdiction of the child as the result of a prior proceeding and the issue is not disputed by the pleadings.

(b) The vital statistics unit shall, on the written request of the court, an attorney, or a party:

(1) identify the court that last had continuing, exclusive jurisdiction of the child in a suit and give the docket number of the suit; or

(2) state that the child has not been the subject of a suit.

(c) The child shall be identified in the request by name, birthdate, and place of birth.

(d) The vital statistics unit shall transmit the information not later than the 10th day after the date on which the request is received.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 44, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 178, Sec. 8, eff. Aug. 30, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.051, eff. April 2, 2015.

ANNOTATIONS

Gunter v. Glasgow, 608 S.W.2d 273 (Tex. Civ. App.—Eastland 1980, no writ). This section refers only to courts within Texas. Thus, a trial court did not err when it did not require a party to provide the name of the out-of-state court that last had jurisdiction of the child.

Sec. 155.102. DISMISSAL

If a court in which a suit is filed determines that another court has continuing, exclusive jurisdiction of the child, the court in which the suit is filed shall dismiss the suit without prejudice.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 155.103. RELIANCE ON VITAL STATISTICS UNIT INFORMATION

(a) A court shall have jurisdiction over a suit if it has been, correctly or incorrectly, informed by the vital statistics unit that the child has not been the subject of a suit and the petition states that no other court has continuing, exclusive jurisdiction over the child.

(b) If the vital statistics unit notifies the court that the unit has furnished incorrect information regarding the existence of another court with continuing, exclusive jurisdiction before the rendition of a final order, the provisions of this chapter apply.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 45, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.052, eff. April 2, 2015.

Sec. 155.104. VOIDABLE ORDER

(a) If a request for information from the vital statistics unit relating to the identity of the court having continuing, exclusive jurisdiction of the child has been made under this subchapter, a final order, except an order of dismissal, may not be rendered until the information is filed with the court.

(b) If a final order is rendered in the absence of the filing of the information from the vital statistics unit, the order is voidable on a showing that a court other than the court that rendered the order had continuing, exclusive jurisdiction.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 46, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.053, eff. April 2, 2015.

ANNOTATIONS

In re T.S.L., 196 S.W.3d 233 (Tex. App.—Fort Worth 2006, no pet.). A court of appeals held a trial court order void when, despite the trial court's knowledge that a party had filed a bureau of vital statistics (BVS) request, the trial court rendered a final order without a filing by the BVS and in that final order named itself as the court of continuing, exclusive jurisdiction even though another court had continuing, exclusive jurisdiction.

SUBCHAPTER C. TRANSFER OF CONTINUING, EXCLUSIVE JURISDICTION

Sec. 155.201. MANDATORY TRANSFER

(a) On the filing of a motion showing that a suit for dissolution of the marriage of the child's parents has been filed in another court and requesting a transfer to that court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship shall, within the time required by Section 155.204, transfer the proceedings to the court in which the dissolution of the marriage is pending.

(a–1) On the filing of a motion showing that a suit in which adoption of a child is requested has been filed in another court located in the county in which the child resides as provided by Section 103.001 and requesting a transfer to that court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship with regard to that child shall, within the time required by Section 155.204, transfer the proceedings to the court in which the suit for adoption is pending.

(a–2) A ~~The~~ motion **described by Subsection (a) or (a–1)** must comply with the requirements of Section 155.204(a).

(b) If a suit to modify or a motion to enforce an order is filed in the court having continuing, exclusive jurisdiction of a suit, on the timely motion of a party the court shall, within the time required by Section 155.204, transfer the proceeding to another county in this state if the child has resided in the other county for six months or longer.

(c) If a suit to modify or a motion to enforce an order is pending at the time a subsequent suit to modify or motion to enforce is filed, the court may transfer the proceeding as provided by Subsection (b) only if the court could have transferred the proceeding at the time the first motion or suit was filed.

(d) On receiving notice that a court exercising jurisdiction under Chapter 262 has ordered the transfer of a suit under Section 262.203(a)(2), the court of continuing, exclusive jurisdiction shall, in

accordance with the requirements of Section 155.204(i), transfer the proceedings to the court in which the suit under Chapter 262 is pending within the time required by Section 155.207(a).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1135, Sec. 1, eff. Sept. 1, 1999. Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 14, eff. June 18, 2005. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 10, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 572 (S.B. 738), Sec. 1, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 1, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 369, Sec. 3, eff. Sept. 1, 2019. Acts 2019, 86th Leg., H.B. 4170, Sec. 7.003, eff. Sept. 1, 2019.

Section 6 of Acts 2019, 86th Leg., H.B. 369 states—

"The changes in law made by this Act to Sections 103.001, 155.201, and 155.204, Family Code, apply to a motion to transfer a suit affecting the parent-child relationship filed on or after the effective date of this Act. A motion to transfer a suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that motion was filed, and the former law is continued in effect for that purpose."

ANNOTATIONS

In re L.S., 557 S.W.3d 736 (Tex. App.—Texarkana 2018, no pet.). The original court that entered a final order in an SAPCR between father and child had continuing, exclusive jurisdiction. TDFPS filed an emergency temporary orders hearing in the county where the child was found in a second court. A transfer from the original court was never done, and the second court did not have jurisdiction to enter a final order.

In re Lovell-Osburn, 448 S.W.3d 616 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding). A trial court entering judgment on a mediated settlement agreement in a SAPCR that includes a provision fixing venue in contravention of the statute requiring that a motion to modify be brought in the county where the child had resided for at least six months preceding the motion would constitute a judgment in favor of a provision that is void as against public policy.

In re M.A.S., 246 S.W.3d 182 (Tex. App.—San Antonio 2007, no pet.): This section did not require transfer of a SAPCR to the county where a father had filed divorce proceedings when the trial court found that the divorce filed by the father was a fraud.

In re Kerst, 237 S.W.3d 441 (Tex. App.—Texarkana 2007, orig. proceeding). Children, who resided for six months in a single county with their foster parents, met the mandatory venue provisions of this section when the foster parents filed a motion to transfer venue to the county in which the foster parents and children resided.

In re Leder, 263 S.W.3d 283 (Tex. App.—Houston [1st Dist.] 2007, orig. proceeding). A mother did not waive her request for mandatory transfer by filing a counterpetition, jury demand, and various other motions when the mother filed these pleadings simultaneously with her request to transfer venue.

In re Cooper, 320 S.W.3d 905 (Tex. App.—Texarkana 2006, orig. proceeding). A mother did not waive any right to seek mandatory transfer of venue when the father agreed to the mother's relocation with the child to a geographical area outside that permitted by the parties' divorce decree even though the agreement was not reduced to a formal amendment or made subject of a written order.

Huey v. Huey, 200 S.W.3d 851 (Tex. App.—Dallas 2006, no pet.). A mother waived her right to transfer a SAPCR modification to a county outside the geographical restriction set forth in the parties' agreed divorce decree. Thus, the mother could not arbitrarily move to a county not included within the decree and obtain jurisdiction there because of her bad conduct.

In re Calderon, 96 S.W.3d 711 (Tex. App.—Tyler 2003, orig. proceeding). Parties cannot contract around the mandatory venue statutes contained within this section. Any attempt to do so is void.

Koether v. Morgan, 787 S.W.2d 582 (Tex. App.—Waco 1990, orig. proceeding). A proper SAPCR transfer under the mandatory venue provisions does not require that all children subject of the suit live in the county to which the party seeks to transfer the suit.

Sec. 155.202. DISCRETIONARY TRANSFER

(a) If the basis of a motion to transfer a proceeding under this subchapter is that the child resides in another county, the court may 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.

(b) For the convenience of the parties and witnesses and in the interest of justice, the court, on the timely motion of a party, may transfer the proceeding to a proper court in another county in the state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Bollard v. Berchelmann, 921 S.W.2d 861 (Tex. App.—San Antonio 1996, orig. proceeding). Although this section provides for mandatory transfer of venue if the child has resided in the transferee county for at least six months, it applies only if a timely motion is filed. Thus, when an untimely motion to transfer venue is filed, transfer of venue is discretionary with the trial court.

Sec. 155.203. DETERMINING COUNTY OF CHILD'S RESIDENCE

In computing the time during which the child has resided in a county, the court may not require that the period of residence be continuous and uninterrupted but shall look to the child's principal residence during the six-month period preceding the commencement of the suit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re Nabors, 276 S.W.3d 190 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding). A trial court should consider elements of permanency when determining the child's county of residence.

In re Ferguson, 172 S.W.3d 122 (Tex. App.—Beaumont 2005, orig. proceeding). A trial court determines a child's principal residence during the six months preceding the filing of suit. Thus, a child cannot have a "dual residence" under this section.

Sec. 155.204. PROCEDURE FOR TRANSFER

(a) A motion to transfer under Section 155.201(a) **or (a–1)** may be filed at any time. The motion must contain a certification that all other parties, including the attorney general, if applicable, have been informed of the filing of the motion.

(b) Except as provided by Subsection (a) or Section 262.203, a motion to transfer by a petitioner or movant is timely if it is made at the time the initial pleadings are filed. A motion to transfer by another party is timely if it is made on or before the first Monday after the 20th day after the date of service of citation or notice of the suit or before the commencement of the hearing, whichever is sooner.

(c) If a timely motion to transfer has been filed and no controverting affidavit is filed within the period allowed for its filing, the proceeding shall, not later than the 21st day after the final date of the period allowed for the filing of a controverting affidavit, be transferred without a hearing to the proper court.

(d) On or before the first Monday after the 20th day after the date of notice of a motion to transfer is served, a party desiring to contest the motion must file a controverting affidavit denying that grounds for the transfer exist.

(e) If a controverting affidavit contesting the motion to transfer is filed, each party is entitled to notice not less than 10 days before the date of the hearing on the motion to transfer.

(f) Only evidence pertaining to the transfer may be taken at the hearing.

(g) If the court finds after the hearing on the motion to transfer that grounds for the transfer exist, the proceeding shall be transferred to the proper court not later than the 21st day after the date the hearing is concluded.

(h) An order transferring or refusing to transfer the proceeding is not subject to interlocutory appeal.

(i) If a transfer order has been signed by a court exercising jurisdiction under Chapter 262, the Department of Family and Protective Services shall file the transfer order with the clerk of the court of continuing, exclusive jurisdiction. On receipt and without a hearing or further order from the court of continuing, exclusive jurisdiction, the clerk of the court of continuing, exclusive jurisdiction shall transfer the files as provided by this subchapter within the time required by Section 155.207(a).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 14, eff. Sept. 1, 1999; Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 15, eff. June 18, 2005. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 11, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 572 (S.B. 738), Sec. 2, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 2, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 369, Sec. 4, eff. Sept. 1, 2019.

Section 6 of Acts 2019, 86th Leg., H.B. 369 states—

"The changes in law made by this Act to Sections 103.001, 155.201, and 155.204, Family Code, apply to a motion to transfer a suit affecting the parent-child relationship filed on or after the effective date of this Act. A motion to transfer a suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that motion was filed, and the former law is continued in effect for that purpose."

ANNOTATIONS

In re Thompson, 434 S.W.3d 624 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding). A trial court did not abuse its discretion in denying as untimely a father's motion to transfer venue in proceedings in the wife's action for support of a disabled adult child, where the father was neither the movant nor counter-petitioner and was thus subject to filing deadline applicable to "other parties." Mandamus is available to compel mandatory transfer in a SAPCR, as an order transferring or refusing to transfer the proceeding is not subject to interlocutory appeal.

In re Wheeler, 177 S.W.3d 350 (Tex. App.—Houston [1st Dist.] 2005, orig. proceeding). A mother timely filed her motion to transfer venue when she filed it simultaneously with her counterpetition to modify the SAPCR.

In re S.G.S., 53 S.W.3d 848 (Tex. App.—Fort Worth 2001, no pet.). The denial or grant of a motion to transfer venue is not subject to interlocutory appeal. Thus, a mother timely filed a notice of appeal within thirty days of the date the trial court signed a final order on the underlying motion to modify.

Sec. 155.205. TRANSFER OF CHILD SUPPORT REGISTRY

(a) On rendition of an order transferring continuing, exclusive jurisdiction to another court, the transferring court shall also order that all future payments of child support be made to the local registry of the transferee court or, if payments have previously been directed to the state disbursement unit, to the state disbursement unit.

(b) The transferring court's local registry or the state disbursement unit shall continue to receive, record, and forward child support payments to the payee until it receives notice that the transferred case has been docketed by the transferee court.

(c) After receiving notice of docketing from the transferee court, the transferring court's local registry shall send a certified copy of the child support payment record to the clerk of the transferee court and shall forward any payments received to the transferee court's local registry or to the state disbursement unit, as appropriate.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 11, eff. Sept. 1, 2001.

Sec. 155.206. EFFECT OF TRANSFER

(a) A court to which a transfer is made becomes the court of continuing, exclusive jurisdiction and all proceedings in the suit are continued as if it were brought there originally.

(b) A judgment or order transferred has the same effect and shall be enforced as if originally rendered in the transferee court.

(c) The transferee court shall enforce a judgment or order of the transferring court by contempt or by any other means by which the transferring court could have enforced its judgment or order. The transferee court shall have the power to punish disobedience of the transferring court's order, whether occurring before or after the transfer, by contempt.

(d) After the transfer, the transferring court does not retain jurisdiction of the child who is the subject of the suit, nor does it have jurisdiction to enforce its order for a violation occurring before or after the transfer of jurisdiction.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Seay v. Valderas, 643 S.W.2d 395 (Tex. 1982, orig. proceeding) (per curiam). Although an order granting or denying transfer of venue is an interlocutory order, the order is final with regard to transferring venue to the transferee court. Once the transfer is complete, the transferor court loses plenary power over the case.

Sec. 155.207. TRANSFER OF COURT FILES

(a) Not later than the 10th working day after the date an order of transfer is signed, the clerk of the court transferring a proceeding shall send to the proper court in the county to which transfer is being made:

(1) the pleadings in the pending proceeding and any other document specifically requested by a party;

(2) certified copies of all entries in the minutes;

(3) a certified copy of each final order; and

(4) a certified copy of the order of transfer signed by the transferring court.

(b) The clerk of the transferring court shall keep a copy of the transferred pleadings and other requested documents. If the transferring court retains jurisdiction of another child who was the subject of the suit, the clerk shall send a copy of the pleadings and other requested documents to the court to which the transfer is made and shall keep the original pleadings and other requested documents.

(c) On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify the judge of the transferee court, all parties, the

clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed.

(d) The clerk of the transferring court shall send a certified copy of the order directing payments to the transferee court, to any party or employer affected by that order, and, if appropriate, to the local registry of the transferee court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 12, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 16, eff. June 18, 2005. Acts 2015, 84th Leg., R.S., Ch. 211 (S.B. 1929), Sec. 1, eff. September 1, 2015.

SUBCHAPTER D. TRANSFER OF PROCEEDINGS WITHIN THE STATE WHEN PARTY OR CHILD RESIDES OUTSIDE THE STATE

Sec. 155.301. AUTHORITY TO TRANSFER

(a) A court of this state with continuing, exclusive jurisdiction over a child custody proceeding under Chapter 152 or a child support proceeding under Chapter 159 shall transfer the proceeding to the county of residence of the resident party if one party is a resident of this state and all other parties including the child or all of the children affected by the proceeding reside outside this state.

(b) If one or more of the parties affected by the proceedings reside outside the state and if more than one party or one or more children affected by the proceeding reside in this state in different counties, the court shall transfer the proceeding according to the following priorities:

(1) to the court of continuing, exclusive jurisdiction, if any;

(2) to the county of residence of the child, if applicable, provided that:

(A) Subdivision (1) is inapplicable; or

(B) the court of continuing, exclusive jurisdiction finds that neither a party nor a child affected by the proceeding resides in the county of the court of continuing, exclusive jurisdiction; or

(3) if Subdivisions (1) and (2) are inapplicable, to the county most appropriate to serve the convenience of the resident parties, the witnesses, and the interest of justice.

(c) Except as otherwise provided by this subsection, if a transfer of continuing, exclusive jurisdiction is sought under this section, the procedures for determining and effecting a transfer of proceedings provided by this chapter apply. If the parties submit to the court an agreed order for transfer, the court shall sign the order without the need for other pleadings.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1036, Sec. 17, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 13, eff. September 1, 2007.

ANNOTATIONS

In re Casseb, 119 S.W.3d 841 (Tex. App.—San Antonio 2003, orig. proceeding). This section applies whenever child support proceedings should be transferred within Texas because a party or a child resides outside Texas regardless whether the suit invokes Tex. Fam. Code ch. 156, Modification, or 159, Uniform Interstate Family Support Act.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE B. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 156. MODIFICATION

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 156.001. ORDERS SUBJECT TO MODIFICATION

A court with continuing, exclusive jurisdiction may modify an order that provides for the conservatorship, support, or possession of and access to a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

RESOURCES

Katie Pearson Klein, *Relocation*, Adv. Fam. L. (2016).

Stephen J. Naylor, *Modifications*, Adv. Fam. L. (2018).

Sec. 156.002. WHO CAN FILE

(a) A party affected by an order may file a suit for modification in the court with continuing, exclusive jurisdiction.

(b) A person or entity who, at the time of filing, has standing to sue under Chapter 102 may file a suit for modification in the court with continuing, exclusive jurisdiction.

(c) The sibling of a child who is separated from the child because of the actions of the Department of Family and Protective Services may file a suit for modification requesting access to the child in the court with continuing, exclusive jurisdiction.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 26, eff. September 1, 2009.

ANNOTATIONS

In re Shifflet, 462 S.W.3d 528 (Tex. App.—Houston [1st Dist.] 2015, orig. proceeding). A trial court should consider evidence supporting claims of standing by a nonparent. When paternal grandparents were given rights in the previous order, were expressly allowed to enforce the order in their own name, and the record shows that both parents agreed for the children to live with said grandparents for extended periods of time, the grandparents had standing to pursue a modification under section 156.002(a).

In re S.A.M., 321 S.W.3d 785, 790 (Tex. App.—Houston [14th Dist.] 2010, no pet.). An intervenor in the original suit who was not named a conservator, but whom the trial court granted telephone access to the children, and was ordered to provide court notice of any changes in intervenor's contact information was held to be a party affected by the final order, and therefore had standing to subsequently file a modification suit.

In re P.D.M., 117 S.W.3d 453 (Tex. App.—Fort Worth 2003, pet. denied) (en banc). The parental presumption applicable in original proceedings does not apply to modification proceedings brought pursuant to Chapter 156. Thus, there was no parental presumption in a modification proceeding between a father and a grandmother.

RESOURCES

Scott Beauchamp, *Nonparent Standing and Substantive Relief (Third Edition)*, Fam. L. 101 (2016).

Stephen J. Naylor, *Modifications*, Adv. Fam. L. (2018).

Chris Nickelson, *Jurisdictional Issues*, Adv. Fam. L. (2015).

Christopher K. Wrampelmeier, *Jurisdiction/Standing*, Adv. Fam. L. (2011).

Sec. 156.003. NOTICE

A party whose rights and duties may be affected by a suit for modification is entitled to receive notice by service of citation.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 178, Sec. 9, eff. Aug. 30, 1999.

Sec. 156.004. PROCEDURE

The Texas Rules of Civil Procedure applicable to the filing of an original lawsuit apply to a suit for modification under this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 156.005. FRIVOLOUS FILING OF SUIT FOR MODIFICATION

Notwithstanding Rules 296 through 299, Texas Rules of Civil Procedure, if the court finds that a suit for modification is filed frivolously or is designed to harass a party, the court shall state that finding in the order and assess attorney's fees as costs against the offending party.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2017, 85th Leg., R.S., Ch. 421 (S.B. 1237), Sec. 11, eff. Sept. 1, 2017.

ANNOTATIONS

In re S.V., __ S.W.3d __, No. 05-16-00519-CV, 2017 WL 3725981 (Tex. App.—Dallas Aug. 30, 2017, pet. denied). A trial court abused its discretion by ordering a possession schedule that placed father's limited access to the children completely within the children's control.

Warchol v. Warchol, 853 S.W.2d 165, 170 (Tex. App.—Beaumont 1993, no writ). If a court finds a party has filed a frivolous modification with the intent to harass the other party, it shall tax the offending party with attorney's fees. Abuse of discretion is the standard of review on appeal.

Sec. 156.006. TEMPORARY ORDERS

(a) Except as provided by Subsection (b), the court may render a temporary order in a suit for modification.

(b) While a suit for modification is pending, the court may not render a temporary order that has the effect of creating a designation, or changing the designation, of the person who has the exclusive right to designate the primary residence of the child, or the effect of creating a geographic area, or changing or eliminating the geographic area, within which a conservator must maintain the child's primary residence, under the final order unless the temporary order is in the best interest of the child and:

(1) the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development;

(2) the person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months; or

(3) the child is 12 years of age or older and has expressed to the court in chambers as provided by Section 153.009 the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child.

(b–1) A person who files a motion for a temporary order authorized by Subsection (b)(1) shall execute and attach to the motion an affidavit on the person's personal knowledge or the person's belief based on representations made to the person by a person with personal knowledge that contains facts that support the allegation that the child's present circumstances would significantly impair the child's physical health or emotional development. The court shall deny the relief sought and decline to schedule a hearing on the motion unless the court determines, on the basis of the affidavit, that facts adequate to support the allegation are stated in the affidavit. If the court determines that the facts stated are adequate to support the allegation, the court shall set a time and place for the hearing.

(c) Subsection (b)(2) does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 15, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1289, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1036, Sec. 18, eff. Sept. 1, 2003. Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 17, eff. June 18, 2005. Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 2, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 27, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 2, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 397 (H.B. 1500), Sec. 1, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 91 (H.B. 1495), Sec. 1, eff. Sept. 1, 2017.

ANNOTATIONS

In re Strickland, 358 S.W.3d 818 (Tex. App.—Fort Worth 2012, orig. proceeding). When a trial court ordered that both parties remain "in the area" while a social study was prepared, the trial court's temporary order had the effect of changing the mother's exclusive right to designate the primary residence of the child under the prior order.

In re Sanchez, 228 S.W.3d 214 (Tex. App.—San Antonio 2007, orig. proceeding). To determine whether temporary orders effectively change a parent's exclusive right to designate the primary residence of a child, a trial court should consider the substance of the orders rather than the trial court's characterization of its own ruling. Thus, a trial court's temporary orders giving a father possession of a child during the week and limiting a mother's periods of possession to the weekend effectively changed the mother's exclusive right to designate the primary residence of the child.

In re Levay, 179 S.W.3d 93 (Tex. App.—San Antonio 2005, orig. proceeding). A trial court abused its discretion when it entered temporary order requiring a child to be placed in a residential facility for an indefinite period of time at the sole discretion of the residential facility and effectively deprived a father of his exclusive right to determine the primary residence of the child.

In re Ostrofsky, 112 S.W.3d 925 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding). A trial court abused its discretion when it entered temporary order requiring the children to be placed in boarding school and effectively deprived a mother of her exclusive right to determine the primary residence of the children.

SUBCHAPTER B. MODIFICATION OF CONSERVATORSHIP, POSSESSION AND ACCESS, OR DETERMINATION OF RESIDENCE

Sec. 156.101. GROUNDS FOR MODIFICATION OF ORDER ESTABLISHING CONSERVATORSHIP OR POSSESSION AND ACCESS

(a) The court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and:

(1) the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the earlier of:

(A) the date of the rendition of the order; or

(B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based;

(2) the child is at least 12 years of age and has expressed to the court in chambers as provided by Section 153.009 the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child; or

(3) the conservator who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months.

(b) Subsection (a)(3) does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 47, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1390, Sec. 16, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1289, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1036, Sec. 19, eff. Sept. 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 3, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 28, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 3, eff. September 1, 2009.

ANNOTATIONS

In re C.H.C., 392 S.W.3d 347, 352 (Tex. App.—Dallas 2013, no pet.). A father's wish to spend "more time with [child] is not a material and substantial change in circumstances. To conclude otherwise would allow any non-custodial parent, whose desire is often to spend more time with his or her child, to easily clear the material and substantial change hurdle of section 156.101. This goes against the purpose of the 'significant hurdles' Texas law has imposed before a possession order may be modified."

In re S.R.O., 143 S.W.3d 237 (Tex. App.—Waco 2004, no pet.). "[R]emarriage of a parent can constitute a material change in circumstances. . . . [T]he fact of remarriage is not sufficient, standing alone, to justify the modification of a prior custody order. The movant must also meet the other statutory requisites necessary to obtain the requested modification, such as establishing that the requested modification would be in the best interest of the child."

RESOURCES

Gregory Beane, *Complications with Trying Modifications*, Adv. Trial Skills for Fam. Lawyers (2018).

Stephen J. Naylor, *Modifications*, Adv. Fam. L. (2018).

Sec. 156.102. MODIFICATION OF EXCLUSIVE RIGHT TO DETERMINE PRIMARY RESIDENCE OF CHILD WITHIN ONE YEAR OF ORDER

(a) If a suit seeking to modify the designation of the person having the exclusive right to designate the primary residence of a child is filed not later than one year after the earlier of the date of the rendition of the order or the date of the signing of a mediated or collaborative law settlement agreement on which the order is based, the person filing the suit shall execute and attach an affidavit as provided by Subsection (b).

(b) The affidavit must contain, along with supporting facts, at least one of the following allegations:

(1) that the child's present environment may endanger the child's physical health or significantly impair the child's emotional development;

(2) that the person who has the exclusive right to designate the primary residence of the child is the person seeking or consenting to the modification and the modification is in the best interest of the child; or

(3) that the person who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child for at least six months and the modification is in the best interest of the child.

(c) The court shall deny the relief sought and refuse to schedule a hearing for modification under this section unless the court determines, on the basis of the affidavit, that facts adequate to support an allegation listed in Subsection (b) are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, the court shall set a time and place for the hearing.

(d) Subsection (b)(3) does not apply to a person who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1289, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1036, Sec. 20, eff. Sept. 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 4, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 29, eff. September 1, 2009.

COMMENTS

This statute applies only if a party seeks to change the conservator with the exclusive right to designate the primary residence of the child.

PRACTICE TIPS

Although a party might need to wait a year to file to ask for the exclusive right to designate the primary residence of the child, the same is not true for any other modification a party might be seeking.

ANNOTATIONS

In re D.W.J.B., 362 S.W.3d 777 (Tex. App.—Texarkana 2012, no pet.). To determine whether an affidavit is sufficient to warrant a hearing on a motion to modify under this section, a trial court must look to the sworn facts contained within the affidavit and make an initial determination whether the facts alone, if true, justify a hearing on the merits.

In re A.L.W., 356 S.W.3d 564 (Tex. App.—Texarkana 2011, no pet.). Even if an affidavit is not appropriately filed under this section, if a court holds a hearing on the petition to modify, any error by the trial court is considered harmless if the movant provides evidence and testimony at the hearing that the children's environment may significantly impair their emotional development.

In re R.C.S., 167 S.W.3d 145 (Tex. App.—Dallas 2005, pet. denied), *cert. denied sub nomine Staley v. Staley*, 547 U.S. 1055 (2006). This section did not require a mother to file an affidavit with her petition to modify only three months after the trial court signed the final decree of divorce because the divorce decree did not grant either parent the exclusive right to designate the primary residence of the children. This section requires the filing of an affidavit only when a movant seeks modification when one parent has the exclusive right to designate the primary residence of the child.

RESOURCES

Kelly Ausley-Flores, *Proving Significant Impairment*, Adv. Fam. L. (2017).

Sec. 156.103. INCREASED EXPENSES BECAUSE OF CHANGE OF RESIDENCE

(a) If a change of residence results in increased expenses for a party having possession of or access to a child, the court may render appropriate orders to allocate those increased expenses on a fair and equitable basis, taking into account the cause of the increased expenses and the best interest of the child.

(b) The payment of increased expenses by the party whose residence is changed is rebuttably presumed to be in the best interest of the child.

(c) The court may render an order without regard to whether another change in the terms and conditions for the possession of or access to the child is made.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1289, Sec. 7, eff. Sept. 1, 2001.

RESOURCES

Gregory Beane, *Complications with Trying Modifications*, Adv. Trial Skills for Fam. Lawyers (2018).

Sec. 156.104. MODIFICATION OF ORDER ON CONVICTION FOR CHILD ABUSE; PENALTY

(a) Except as provided by Section 156.1045, the conviction of a conservator for an offense under Section 21.02, Penal Code, or the conviction of a conservator or an order deferring adjudication with regard to the conservator, for an offense involving the abuse of a child under Section 21.11, 22.011, or 22.021, Penal Code, is a material and substantial change of circumstances sufficient to justify a temporary order and modification of an existing court order or portion of a decree that provides for the appointment of a conservator or that sets the terms and conditions of conservatorship or for the possession of or access to a child.

(b) A person commits an offense if the person files a suit to modify an order or portion of a decree based on the grounds permitted under Subsection (a) and the person knows that the person against whom the motion is filed has not been convicted of an offense, or received deferred adjudication for an offense, under Section 21.02, 21.11, 22.011, or 22.021, Penal Code. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1289, Sec. 8, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.29, eff. September 1, 2007.

Sec. 156.1045. MODIFICATION OF ORDER ON CONVICTION FOR FAMILY VIOLENCE

(a) The conviction or an order deferring adjudication of a person who is a possessory conservator or a sole or joint managing conservator for an offense involving family violence is a material and substantial change of circumstances sufficient to justify a temporary order and modification of an existing court order or portion of a decree that provides for the appointment of a conservator or that sets the terms and conditions of conservatorship or for the possession of or access to a child to conform the order to the requirements of Section 153.004(d).

(b) A person commits an offense if the person files a suit to modify an order or portion of a decree based on the grounds permitted under Subsection (a) and the person knows that the person against whom the motion is filed has not been convicted of an offense, or received deferred adjudication for an offense, involving family violence. An offense under this subsection is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1289, Sec. 9, eff. Sept. 1, 2001.

ANNOTATIONS

In re R.T.H., 175 S.W.3d 519, 521–22 (Tex. App.—Fort Worth 2005, no pet.). "[I]f the trial court had named [the father] as the parent with the exclusive right to determine [the child's] primary residence, evidence that [the mother] was placed on deferred adjudication for [assaulting the father] would be sufficient to support the modification. But section 156.1045 does not *compel* the trial court to modify an existing order in such a circumstance. In a modification proceeding, the best interest of the child must always be the trial court's primary concern." (emphasis in original).

RESOURCES

Jeana Lungwitz, *Domestic Violence Issues for CPS Cases: Highlights of the SB 434 Task Force Report, Texas Statutes Related to Custody and Domestic Violence*, Adv. Fam. L. Child Abuse Workshop (2015).

Sec. 156.105. MODIFICATION OF ORDER BASED ON MILITARY DUTY

The military duty of a conservator who is ordered to military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701, does not by itself constitute a material and substantial change of circumstances sufficient to justify a modification of an existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child except that the court may render a temporary order under Subchapter L, Chapter 153.

Added by Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 18, eff. June 18, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 14, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1041 (H.B. 1864), Sec. 5, eff. June 15, 2007. Acts 2009, 81st Leg., R.S., Ch. 727 (S.B. 279), Sec. 5, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1113 (H.B. 1012), Sec. 30, eff. September 1, 2009.

SUBCHAPTER C. REPEALED

SUBCHAPTER D. REPEALED

SUBCHAPTER E. MODIFICATION OF CHILD SUPPORT

Sec. 156.401. GROUNDS FOR MODIFICATION OF CHILD SUPPORT

(a) Except as provided by Subsection (a–1), (a–2), or (b), the court may modify an order that provides for the support of a child, including an order for health care coverage under Section 154.182 or an order for dental care coverage under Section 154.1825, if:

(1) the circumstances of the child or a person affected by the order have materially and substantially changed since the earlier of:

(A) the date of the order's rendition; or

(B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based; or

(2) it has been three years since the order was rendered or last modified and the monthly amount of the child support award under the order differs by either 20 percent or $100 from the amount that would be awarded in accordance with the child support guidelines.

(a–1) If the parties agree to an order under which the amount of child support differs from the amount that would be awarded in accordance with the child support guidelines, the court may modify the order

only if the circumstances of the child or a person affected by the order have materially and substantially changed since the date of the order's rendition.

(a–2) A court or administrative order for child support in a Title IV-D case may be modified at any time, and without a showing of material and substantial change in the circumstances of the child or a person affected by the order, to provide for medical support or dental support of the child if the order does not provide health care coverage as required under Section 154.182 or dental care coverage as required under Section 154.1825.

(b) A support order may be modified with regard to the amount of support ordered only as to obligations accruing after the earlier of:

(1) the date of service of citation; or

(2) an appearance in the suit to modify.

(c) An order of joint conservatorship, in and of itself, does not constitute grounds for modifying a support order.

(d) Release of a child support obligor from incarceration is a material and substantial change in circumstances for purposes of this section if the obligor's child support obligation was abated, reduced, or suspended during the period of the obligor's incarceration.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 43, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1036, Sec. 21, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 19, eff. June 18, 2005. Acts 2007, 80th Leg., R.S., Ch. 363 (S.B. 303), Sec. 6, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 15, eff. September 1, 2007. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 3, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 5, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 29, eff. September 1, 2018.

ANNOTATIONS

London v. London, 192 S.W.3d 6, 15 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). "The trial court is given broad discretion in setting child support payments and in modifying those payments."

In re C.C.J., 244 S.W.3d 911, 917–18 (Tex. App.—Dallas 2008, no pet.). "In determining whether there has been a material and substantial change in circumstances, it is well-settled that the trial court must examine and compare the circumstances of the parents and any minor children at the time of the initial order with the circumstances existing at the time modification is sought. The record must contain both historical and current evidence of the relevant person's financial circumstances. Without both sets of data, the court has nothing to compare and cannot determine whether a material and substantial change has occurred. The movant has the burden to show the requisite material and substantial change in circumstances since the entry of the previous order."

Sec. 156.402. Effect of Guidelines

(a) The court may consider the child support guidelines for single and multiple families under Chapter 154 to determine whether there has been a material or substantial change of circumstances under this chapter that warrants a modification of an existing child support order if the modification is in the best interest of the child.

(b) If the amount of support contained in the order does not substantially conform with the guidelines for single and multiple families under Chapter 154, the court may modify the order to substantially conform with the guidelines if the modification is in the best interest of the child. A court may consider other relevant evidence in addition to the factors listed in the guidelines.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, Sec. 12, eff. Sept. 1, 1999.

ANNOTATIONS

In re D.S., 76 S.W.3d 512 (Tex. App.—Houston [14th Dist.] 2002, no pet.). A trial court did not abuse its discretion when it refused to modify the parties' child support agreement, under which the parents agreed that the father would pay lower support until he completed school, after which his child support would increase. The father thus accepted the benefits of the agreement and could not then seek to reduce his support payments only when his child support would increase.

Scott v. Younts, 926 S.W.2d 415, 418–19 (Tex. App.—Corpus Christi 1996, writ denied). "The 'guidelines' referred to in § 14.056 [now section 156.402] instruct the courts to consider various factors when ordering child support, based in part on the net resources and abilities of the parties, as well as the needs of the child. A court may deviate from the guidelines when their application would be inappropriate or unjust under the circumstances."

RESOURCES

Joseph Indelicato, Jr., Nina Indelicato, & Katherine T. Hamilton, *Child Support Outside the Box—When the Guidelines Don't Fit*, Adv. Fam. L. (2015).

Katherine A. Kinser & Lauren E. Melhart, *Pursue and Defend a Child Support Case*, Fam. L. 101 (2016).

Sec. 156.403. VOLUNTARY ADDITIONAL SUPPORT

A history of support voluntarily provided in excess of the court order does not constitute cause to increase the amount of an existing child support order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 156.404. NET RESOURCES OF NEW SPOUSE

(a) The court may not add any portion of the net resources of a new spouse to the net resources of an obligor or obligee in order to calculate the amount of child support to be ordered in a suit for modification.

(b) The court may not subtract the needs of a new spouse, or of a dependent of a new spouse, from the net resources of the obligor or obligee in a suit for modification.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Starck v. Nelson, 878 S.W.2d 302, 305–06 (Tex. App.—Corpus Christi 1994, no writ). In reading current Tex. Fam. Code §§ 154.062, 154.067, and 156.404, which set out what the court *must* consider, *may* consider, and what they *may not* consider (including a new spouse's contribution), the three provisions should be read together and interpreted as harmoniously as possible. Allowing a court to vary from support guidelines because an obligor's new spouse contributes to shared living expenses is prohibited.

Broday v. Burleson, 632 S.W.2d 803 (Tex. App.—Fort Worth 1982, no writ). A father's financial obligations regarding his new spouse were not allowed to mitigate his child support obligation.

Sec. 156.405. CHANGE IN LIFESTYLE

An increase in the needs, standard of living, or lifestyle of the obligee since the rendition of the existing order does not warrant an increase in the obligor's child support obligation.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re J.A.H., 311 S.W.3d 536 (Tex. App.—El Paso 2009, no pet.). The purchase of a larger house by a mother after her remarriage constituted a change in her lifestyle, not a material and substantial change in the lifestyle of the children.

Sec. 156.406. USE OF GUIDELINES FOR CHILDREN IN MORE THAN ONE HOUSEHOLD

In applying the child support guidelines in a suit under this subchapter, if the obligor has the duty to support children in more than one household, the court shall apply the percentage guidelines for multiple families under Chapter 154.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.23, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, Sec. 13, eff. Sept. 1, 1999.

Sec. 156.407. ASSIGNMENT OF CHILD SUPPORT RIGHT

A notice of assignment filed under Chapter 231 does not constitute a modification of an order to pay child support.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 156.408. MODIFICATION OF SUPPORT ORDER RENDERED BY ANOTHER STATE

(a) Unless both parties and the child reside in this state, a court of this state may modify an order of child support rendered by an appropriate tribunal of another state only as provided by Chapter 159.

(b) If both parties and the child reside in this state, a court of this state may modify an order of child support rendered by an appropriate tribunal of another state after registration of the order as provided by Chapter 159.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 13, eff. Sept. 1, 2001.

Sec. 156.409. CHANGE IN PHYSICAL POSSESSION

(a) The court shall, on the motion of a party or a person having physical possession of the child, modify an order providing for the support of the child to provide that the person having physical possession of the child for at least six months shall have the right to receive and give receipt for payments of support for the child and to hold or disburse money for the benefit of the child if the sole managing conservator of the child or the joint managing conservator who has the exclusive right to determine the primary residence of the child has:

(1) voluntarily relinquished the primary care and possession of the child;

(2) been incarcerated or sentenced to be incarcerated for at least 90 days; or

(3) relinquished the primary care and possession of the child in a proceeding under Title 3 or Chapter 262.

(a–1) If the court modifies a support order under this section, the court shall order the obligor to pay the person or entity having physical possession of the child any unpaid child support that is not subject to offset or reimbursement under Section 157.008 and that accrues after the date the sole or joint managing conservator:

(1) relinquishes possession and control of the child, whether voluntarily or in a proceeding under Title 3 or Chapter 262; or

(2) is incarcerated.

(a–2) This section does not affect the ability of the court to render a temporary order for the payment of child support that is in the best interest of the child.

(a–3) An order under this section that modifies a support order because of the incarceration of the sole or joint managing conservator of a child must provide that on the conservator's release from incarceration the conservator may file an affidavit with the court stating that the conservator has been released from incarceration, that there has not been a modification of the conservatorship of the child during the incarceration, and that the conservator has resumed physical possession of the child. A copy of the affidavit shall be delivered to the obligor and any other party, including the Title IV-D agency if appropriate. On receipt of the affidavit, the court on its own motion shall order the obligor to make support payments to the conservator.

(b) Notice of a motion for modification under this section may be served in the manner for serving a notice under Section 157.065.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 14, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 14, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1289, Sec. 10, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 261 (H.B. 2231), Sec. 1, eff. May 30, 2005. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 16, eff. September 1, 2007.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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Jim Mueller, *Contempt: Know the Facts or Pay the Price*, Adv. Trial Skills for Fam. Lawyers (2018).

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SUBCHAPTER A. PLEADINGS AND DEFENSES

Sec. 157.001. MOTION FOR ENFORCEMENT

(a) A motion for enforcement as provided in this chapter may be filed to enforce any provision of a temporary or final order rendered in a suit.

(b) The court may enforce by contempt any provision of a temporary or final order.

(c) The court may enforce a temporary or final order for child support as provided in this chapter or Chapter 158.

(d) A motion for enforcement shall be filed in the court of continuing, exclusive jurisdiction.

(e) For purposes of this section, "temporary order" includes a temporary restraining order, standing order, injunction, and any other temporary order rendered by a court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1105 (H.B. 3121), Sec. 1, eff. September 1, 2015.

ANNOTATIONS

In re Green, 221 S.W.3d 645, 649 (Tex. 2007). "A failure to provide child support, including a failure to provide health insurance under a voluntary agreement, is punishable by contempt."

In re Maasoumi, 339 S.W.3d 787, 789 (Tex. App.—Dallas 2011, orig. proceeding). A motion for enforcement may not seek a substantive change to a final order. A court abused its discretion when, on a motion for enforcement, it changed its prior modification order to provide that the child's mother, rather than the father, maintain possession of the child's passport.

Jones v. Ignal, 798 S.W.2d 898, 901 (Tex. App.—Austin 1990, writ denied). A father who filed an answer to a mother's motion for enforcement by contempt appeared with respect to the motion to enforce by contempt and all subsequent amendments filed by the mother.

Sec. 157.002. CONTENTS OF MOTION

(a) A motion for enforcement must, in ordinary and concise language:

(1) identify the provision of the order allegedly violated and sought to be enforced;

(2) state the manner of the respondent's alleged noncompliance;

(3) state the relief requested by the movant; and

(4) contain the signature of the movant or the movant's attorney.

(b) A motion for enforcement of child support:

(1) must include the amount owed as provided in the order, the amount paid, and the amount of arrearages;

(2) if contempt is requested, must include the portion of the order allegedly violated and, for each date of alleged contempt, the amount due and the amount paid, if any;

(3) may include as an attachment a copy of a record of child support payments maintained by the Title IV-D registry or a local registry; and

(4) if the obligor owes arrearages for a child receiving assistance under Part A of Title IV of the federal Social Security Act (42 U.S.C. Section 601 et seq.), may include a request that:

(A) the obligor pay the arrearages in accordance with a plan approved by the court; or

(B) if the obligor is already subject to a plan and is not incapacitated, the obligor participate in work activities, as defined under 42 U.S.C. Section 607(d), that the court determines appropriate.

(c) A motion for enforcement of the terms and conditions of conservatorship or possession of or access to a child must include the date, place, and, if applicable, the time of each occasion of the respondent's failure to comply with the order.

(d) The movant is not required to plead that the underlying order is enforceable by contempt to obtain other appropriate enforcement remedies.

(e) The movant may allege repeated past violations of the order and that future violations of a similar nature may occur before the date of the hearing.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 17, eff. Sept. 1, 1997.

ANNOTATIONS

In re Office of the Attorney General, 422 S.W.3d 623, 630 (Tex. 2013). "[A] Respondent may be found in contempt only for violations that are specifically pled in the motion for enforcement under section 157.002."

In re J.A.L., No. 14-16-00614-CV, 2017 WL 4128947, at *6 (Tex. App.—Houston [14th Dist.] Sept. 19, 2017, no pet.) (mem. op.). A movant who exercises the option to pursue future anticipated arrearages arising between the time of the filing and hearing should recover them only once. Mother's two enforcement actions did not seek a duplicative recovery for the same time period of arrearages.

In re Ezukanma, 336 S.W.3d 389, 396 (Tex. App.—Fort Worth 2011, orig. proceeding). "The purpose of this section is to provide respondent with proper notice of the allegations of contempt for which he must prepare a defense at the hearing on the motion." A motion to enforce under this section includes only the violations that occurred as of the time the motion is filed.

Sec. 157.003. JOINDER OF CLAIMS AND REMEDIES; NO ELECTION OF REMEDIES

(a) A party requesting enforcement may join in the same proceeding any claim and remedy provided for in this chapter, other provisions of this title, or other rules of law.

(b) A motion for enforcement does not constitute an election of remedies that limits or precludes:

(1) the use of any other civil or criminal proceeding to enforce a final order; or

(2) a suit for damages under Chapter 42.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.24, eff. Sept. 1, 1999.

ANNOTATIONS

In re P.D.D., 256 S.W.3d 834, 842 (Tex. App.—Texarkana 2008, no pet.). The issues of current and future support, custody and visitation, and enforcement of orders are separate and definable questions that may but are not required to be joined in the same proceeding.

Sec. 157.004. TIME LIMITATIONS; ENFORCEMENT OF POSSESSION

The court retains jurisdiction to render a contempt order for failure to comply with the order of possession and access if the motion for enforcement is filed not later than the sixth month after the date:

(1) the child becomes an adult; or

(2) on which the right of possession and access terminates under the order or by operation of law.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.005. TIME LIMITATIONS; ENFORCEMENT OF CHILD SUPPORT

(a) The court retains jurisdiction to render a contempt order for failure to comply with the child support order if the motion for enforcement is filed not later than the second anniversary of the date:

(1) the child becomes an adult; or

(2) on which the child support obligation terminates under the order or by operation of law.

(b) The court retains jurisdiction to confirm the total amount of child support arrearages and render a cumulative money judgment for past-due child support, as provided by Section 157.263, if a motion for enforcement requesting a cumulative money judgment is filed not later than the 10th anniversary after the date:

(1) the child becomes an adult; or

(2) on which the child support obligation terminates under the child support order or by operation of law.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 15, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 21, eff. June 18, 2005. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 17, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 13, eff. June 19, 2009.

ANNOTATIONS

In re D.W.G., 391 S.W.3d 154, 160 (Tex. App.—San Antonio 2012, no pet.). "The Texas appellate courts that have been presented with the issue of whether section 157.005(b) applies to child support enforcement remedies other than a cumulative money judgment, such as writs of withholding and child support liens, have concluded it does not. Similarly, . . . we conclude section 157.005(b) only applies to cumulative money judgments for past-due child support as provided by section 157.263, not to other child support enforcement remedies available under the Texas Family Code."

Isaacs v. Isaacs, 338 S.W.3d 184, 188 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). This section limits a trial court's jurisdiction to confirm child support arrearages and to render a cumulative money judgment to a specific period of time. It does not limit the trial court's jurisdiction to enforce a child support obligation under other sections of the Family Code, such as sections 157.323 (rendition of judgment) or section 158.309 (income withholding).

In re Munks, 263 S.W.3d 270, 274 (Tex. App.—Houston [1st Dist.] 2007, orig. proceeding). A trial court lacked jurisdiction to hold a father in contempt for failure to pay child support arrearages when the mother filed a motion to enforce the order to pay arrearages six months after the child turned 18 years old, even though the father's payments on the arrearages extended beyond the date of the child's adulthood.

Sec. 157.006. AFFIRMATIVE DEFENSE TO MOTION FOR ENFORCEMENT

(a) The issue of the existence of an affirmative defense to a motion for enforcement does not arise unless evidence is admitted supporting the defense.

(b) The respondent must prove the affirmative defense by a preponderance of the evidence.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.007. AFFIRMATIVE DEFENSE TO MOTION FOR ENFORCEMENT OF POSSESSION OR ACCESS

(a) The respondent may plead as an affirmative defense to contempt for failure to comply with an order for possession or access to a child that the movant voluntarily relinquished actual possession and control of the child.

(b) The voluntary relinquishment must have been for the time encompassed by the court-ordered periods during which the respondent is alleged to have interfered.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Ex parte Rosser, 899 S.W.2d 382, 385 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding). The involuntary inability to comply with an order is a valid defense to a motion for enforcement by contempt. However, the burden to conclusively prove involuntary inability is on the respondent.

Sec. 157.008. AFFIRMATIVE DEFENSE TO MOTION FOR ENFORCEMENT OF CHILD SUPPORT

(a) An obligor may plead as an affirmative defense in whole or in part to a motion for enforcement of child support that the obligee voluntarily relinquished to the obligor actual possession and control of a child.

(b) The voluntary relinquishment must have been for a time period in excess of any court-ordered periods of possession of and access to the child and actual support must have been supplied by the obligor.

(c) An obligor may plead as an affirmative defense to an allegation of contempt or of the violation of a condition of community service requiring payment of child support that the obligor:

(1) lacked the ability to provide support in the amount ordered;

(2) lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

(3) attempted unsuccessfully to borrow the funds needed; and

(4) knew of no source from which the money could have been borrowed or legally obtained.

(d) An obligor who has provided actual support to the child during a time subject to an affirmative defense under this section may request reimbursement for that support as a counterclaim or offset against the claim of the obligee.

(e) An action against the obligee for support supplied to a child is limited to the amount of periodic payments previously ordered by the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

PRACTICE TIPS

The practitioner is directed to Tex. R. Civ. P. 95, Pleas of Payment, which requires:

> When a defendant shall desire to prove payment, he shall file with his plea an account stating distinctly the nature of such payment, and the several items thereof; failing to do so, he shall not be allowed to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof.

A respondent who intends to set up the affirmative defense of payment must plead payment with specificity as required by rule 95.

ANNOTATIONS

Office of the Attorney General of Texas v. Scholer, 403 S.W.3d 859 (Tex. 2013). The Attorney General was not estopped to collect back child support from a father, even though the mother agreed to forgo child support if the father would relinquish his parental rights, because the payment of child support is a court-ordered duty to one's child. Estoppel cannot be used as an affirmative defense in child support collection suits.

In re W.J.B., 294 S.W.3d 873, 880 (Tex. App.—Beaumont 2009, no pet.). Whether a parent voluntarily relinquished periods of possession of and access to the child generally is a fact intensive inquiry. "Relinquishment" does not mean giving up all rights of control and possession. Rather, the court must compare the rights given each parent in the divorce decree to determine the extent, if any, of relinquishment. Here, the parents had divorced, but the mother voluntarily relinquished her rights to sole periods of possession by allowing the father to move into the home and act as a full-time parent after divorce, including paying actual support during that time. Therefore, under the parties' divorce decree, the periods of possession and access afforded to the father during the parties' cohabitation were in "excess of any court-ordered periods of possession." Sufficient evidence supported the trial court's decision to allow the offset.

Chenault v. Banks, 296 S.W.3d 186, 191 (Tex. App.—Houston [14th Dist.] 2009, no pet.). If an obligor proves the defense of voluntary relinquishment, he is entitled either to an offset or reimbursement of his or her child support obligations, depending on whether he continued to pay child support during the period of voluntary relinquishment.

In re Hammond, 155 S.W.3d 222, 228 (Tex. App.—El Paso 2004, orig. proceeding). A respondent must conclusively establish all four elements of subsection 157.008(c) to be entitled to habeas relief.

Ex parte Rojo, 925 S.W.2d 654, 656 (Tex. 1996, orig. proceeding) (per curiam). An order of contempt imposing a coercive restraint is void if the condition for purging the contempt is impossible. Therefore, the inability to pay is a valid defense to civil contempt.

Sec. 157.009. CREDIT FOR PAYMENT OF DISABILITY BENEFITS

In addition to any other credit or offset available to an obligor under this title, if a child for whom the obligor owes child support receives a lump-sum payment as a result of the obligor's disability and that payment is made to the obligee as the representative payee of the child, the obligor is entitled to a credit. The credit under this section is equal to the amount of the lump-sum payment and shall be applied to any child support arrearage and interest owed by the obligor on behalf of that child at the time the payment is made.

Added by Acts 2009, 81st Leg., R.S., Ch. 538 (S.B. 1514), Sec. 1, eff. June 19, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 14, eff. June 19, 2009.

PRACTICE TIPS

A lump-sum payment is a credit against all child support arrearages (including interest) irrespective of whether the arrearage accrued prior to the disability of the obligor. Further, if a credit is not shown on the child support records, the practitioner should be aware that the credit is an affirmative defense under Tex. R. Civ. P. 94 and is subject to the pleading requirements of Tex. R. Civ. P. 95.

SUBCHAPTER B. PROCEDURE

Sec. 157.061. SETTING HEARING

(a) On filing a motion for enforcement requesting contempt, the court shall set the date, time, and place of the hearing and order the respondent to personally appear and respond to the motion.

(b) If the motion for enforcement does not request contempt, the court shall set the motion for hearing on the request of a party.

(c) The court shall give preference to a motion for enforcement of child support in setting a hearing date and may not delay the hearing because a suit for modification of the order requested to be enforced has been or may be filed.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re R.G., 362 S.W.3d 118, 123 (Tex. App.—San Antonio 2011, pet. denied). When a motion to enforce requesting contempt is filed, this section imposes a "statutorily required ministerial duty" on the trial court to set the motion for hearing.

Sec. 157.062. NOTICE OF HEARING

(a) The notice of hearing must include the date, time, and place of the hearing.

(b) The notice of hearing need not repeat the allegations contained in the motion for enforcement.

(c) Notice of hearing on a motion for enforcement of a final order providing for child support or possession of or access to a child, any provision of a final order rendered against a party who has already appeared in a suit under this title, or any provision of a temporary order shall be given to the respondent by personal service of a copy of the motion and notice not later than the 10th day before the date of the hearing. For purposes of this subsection, "temporary order" includes a temporary restraining order, standing order, injunction, and any other temporary order rendered by a court.

(d) If a motion for enforcement of a final order, other than a final order rendered against a party who has already appeared in a suit under this title, is joined with another claim:

(1) the hearing may not be held before 10 a.m. on the first Monday after the 20th day after the date of service; and

(2) the provisions of the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit apply.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 49, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1105 (H.B. 3121), Sec. 2, eff. September 1, 2015.

ANNOTATIONS

Ex parte Delcourt, 888 S.W.2d 811, 812 (Tex. 1994, orig. proceeding) (per curiam). A second contempt judgment and commitment order signed by a trial court two weeks after it signed the first contempt judgment and commitment order was void because the trial court denied the respondent due process when it signed the second contempt judgment and commitment order without notice and a hearing.

Sec. 157.063. APPEARANCE

A party makes a general appearance for all purposes in an enforcement proceeding if:

(1) the party appears at the hearing or is present when the case is called; and

(2) the party does not object to the court's jurisdiction or the form or manner of the notice of hearing.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Ex parte Linder, 783 S.W.2d 754, 759 (Tex. App.—Dallas 1990, orig. proceeding) (en banc). A respondent who appeared at a contempt hearing waived any complaint about improper notice and service when the record did not contain evidence that the respondent objected to improper notice and service.

Sec. 157.064. SPECIAL EXCEPTION

(a) If a respondent specially excepts to the motion for enforcement or moves to strike, the court shall rule on the exception or the motion to strike before it hears the motion for enforcement.

(b) If an exception is sustained, the court shall give the movant an opportunity to replead and continue the hearing to a designated date and time without the requirement of additional service.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

This section provides an exception to the requirement that any motion seeking enforcement by contempt requires personal service. If a trial court sustains special exceptions filed by a respondent who was personally served, an amended pleading may be served on the respondent's attorney pursuant to Tex. R. Civ. P. 21a.

ANNOTATIONS

In re Mann, 162 S.W.3d 429, 434–35 (Tex. App.—Fort Worth 2005, orig. proceeding). This section allows but does not require a respondent to file special exceptions to a motion for enforcement. The failure of a respondent to specially except to lack of notice in a motion to enforce does not waive such a complaint.

Sec. 157.065. NOTICE OF HEARING, FIRST CLASS MAIL

(a) If a party has been ordered under Chapter 105 to provide the court and the state case registry with the party's current mailing address, notice of a hearing on a motion for enforcement of a final order or on a request for a court order implementing a postjudgment remedy for the collection of child support may be served by mailing a copy of the notice to the respondent, together with a copy of the motion or request, by first class mail to the last mailing address of the respondent on file with the court and the registry.

(b) The notice may be sent by the clerk of the court, the attorney for the movant or party requesting a court order, or any person entitled to the address information as provided in Chapter 105.

(c) A person who sends the notice shall file of record a certificate of service showing the date of mailing and the name of the person who sent the notice.

(d) Repealed by Acts 1997, 75th Leg., ch. 911, Sec. 97(a), eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 18, 97(a), eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 18, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 5, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1105 (H.B. 3121), Sec. 3, eff. September 1, 2015.

Sec. 157.066. FAILURE TO APPEAR

If a respondent who has been personally served with notice to appear at a hearing does not appear at the designated time, place, and date to respond to a motion for enforcement of an existing court order, regardless of whether the motion is joined with other claims or remedies, the court may not hold the

respondent in contempt but may, on proper proof, grant a default judgment for the relief sought and issue a capias for the arrest of the respondent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 50, eff. Sept. 1, 1995.

COMMENTS

A person cannot be held in contempt in absentia. However, a default judgment for the arrearage amount may be taken. The remedy for failure to appear with respect to the contempt claims is for the court to issue a capias for the arrest of the respondent. Personal service is required for the issuance of a capias.

ANNOTATIONS

In re White, 45 S.W.3d 787 (Tex. App.—Waco 2001, orig. proceeding). When a respondent fails to appear at a hearing on a motion for contempt for failure to pay child support, the trial court cannot hold the respondent in contempt but must issue a capias to have the respondent apprehended and brought to court for the hearing.

In re Taylor, 39 S.W.3d 406, 413–14 (Tex. App.—Waco 2001, orig. proceeding): "[A]lthough the trial court is supposed to 'order' the respondent to appear, section 157.066 makes it clear that even if that is done, failure to appear is not punishable by contempt, but rather, if and only if personal service has been obtained, the court can render a default judgment and order a capias for the arrest of the respondent. If Relator wants to preserve these remedies of default judgment and a capias, it is his responsibility to obtain personal service on [respondent] of a proper notice of the hearing, and provide proof of same to the trial court."

SUBCHAPTER C. FAILURE TO APPEAR; BOND OR SECURITY

Sec. 157.101. BOND OR SECURITY FOR RELEASE OF RESPONDENT

(a) When the court orders the issuance of a capias as provided in this chapter, the court shall also set an appearance bond or security, payable to the obligee or to a person designated by the court, in a reasonable amount.

(b) An appearance bond or security in the amount of $1,000 or a cash bond in the amount of $250 is presumed to be reasonable. Evidence that the respondent has attempted to evade service of process, has previously been found guilty of contempt, or has accrued arrearages over $1,000 is sufficient to rebut the presumption. If the presumption is rebutted, the court shall set a reasonable bond.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re Gawerc, 165 S.W.3d 314 (Tex. 2005, orig. proceeding) (per curiam). A petitioner may not be confined for civil contempt when he conclusively establishes that he is unable to post the bond required for his release.

Sec. 157.102. CAPIAS OR WARRANT; DUTY OF LAW ENFORCEMENT OFFICIALS

Law enforcement officials shall treat a capias or arrest warrant ordered under this chapter in the same manner as an arrest warrant for a criminal offense and shall enter the capias or warrant in the computer records for outstanding warrants maintained by the local police, sheriff, and Department of Public Safety. The capias or warrant shall be forwarded to and disseminated by the Texas Crime Information Center and the National Crime Information Center.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 16, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 19, eff. September 1, 2007.

PRACTICE TIPS

When issuing a capias for a respondent in another county, the practitioner should ensure that the county in which the action is pending is served with the capias, as well as the county in which the respondent resides, so that when the respondent is arrested the receiving county will have notice of the capias to facilitate receiving the prisoner.

Sec. 157.103. CAPIAS FEES

(a) The fee for issuing a capias as provided in this chapter is the same as the fee for issuance of a writ of attachment.

(b) The fee for serving a capias is the same as the fee for service of a writ in civil cases generally.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.104. CONDITIONAL RELEASE

If the respondent is taken into custody and released on bond, the court shall condition the bond on the respondent's promise to appear in court for a hearing as required by the court without the necessity of further personal service of notice on the respondent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.105. RELEASE HEARING

(a) If the respondent is taken into custody and not released on bond, the respondent shall be brought before the court that issued the capias on or before the third working day after the arrest. The court shall determine whether the respondent's appearance in court at a designated time and place can be assured by a method other than by posting the bond or security previously established.

(a–1) The court may conduct the release hearing under Subsection (a) through the use of teleconferencing, videoconferencing, or other remote electronic means if the court determines that the method of appearance will facilitate the hearing.

(b) If the respondent is released without posting bond or security, the court shall set a hearing on the alleged contempt at a designated date, time, and place and give the respondent notice of hearing in open court. No other notice to the respondent is required.

(c) If the court is not satisfied that the respondent's appearance in court can be assured and the respondent remains in custody, a hearing on the alleged contempt shall be held as soon as practicable, but not later than the seventh day after the date that the respondent was taken into custody, unless the respondent and the respondent's attorney waive the accelerated hearing.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 21, eff. September 1, 2007. Acts 2017, 85th Leg., R.S., Ch. 961 (S.B. 1965), Sec. 1, eff. Sept. 1, 2017.

Sec. 157.106. CASH BOND AS SUPPORT

(a) If the respondent has posted a cash bond and is found to be in arrears in the payment of court-ordered child support, the court shall order that the proceeds of the cash bond be paid to the child support obligee or to a person designated by the court, not to exceed the amount of child support arrearages determined to exist.

(b) This section applies without regard to whether the respondent appears at the hearing.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.107. APPEARANCE BOND OR SECURITY OTHER THAN CASH BOND AS SUPPORT

(a) If the respondent fails to appear at the hearing as directed, the court shall order that the appearance bond or security be forfeited and that the proceeds of any judgment on the bond or security, not to exceed the amount of child support arrearages determined to exist, be paid to the obligee or to a person designated by the court.

(b) The obligee may file suit on the bond.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.108. CASH BOND AS PROPERTY OF RESPONDENT

A court shall treat a cash bond posted for the benefit of the respondent as the property of the respondent. A person who posts the cash bond does not have recourse in relation to an order regarding the bond other than against the respondent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.109. SECURITY FOR COMPLIANCE WITH ORDER

(a) The court may order the respondent to execute a bond or post security if the court finds that the respondent:

(1) has on two or more occasions denied possession of or access to a child who is the subject of the order; or

(2) is employed by an employer not subject to the jurisdiction of the court or for whom income withholding is unworkable or inappropriate.

(b) The court shall set the amount of the bond or security and condition the bond or security on compliance with the court order permitting possession or access or the payment of past-due or future child support.

(c) The court shall order the bond or security payable through the registry of the court:

(1) to the obligee or other person or entity entitled to receive child support payments designated by the court if enforcement of child support is requested; or

(2) to the person who is entitled to possession or access if enforcement of possession or access is requested.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re Gonzalez, 993 S.W.2d 147 (Tex. App.—San Antonio 1999, pet. denied). This section does not require the court to make a written finding. Evidence presented at a pretrial conference that a father worked for an employer not subject to the court's jurisdiction was within the court's discretion to consider when ordering the bond.

Sec. 157.110. FORFEITURE OF SECURITY FOR FAILURE TO COMPLY WITH ORDER

(a) On the motion of a person or entity for whose benefit a bond has been executed or security deposited, the court may forfeit all or part of the bond or security deposit on a finding that the person who furnished the bond or security:

(1) has violated the court order for possession of and access to a child; or

(2) failed to make child support payments.

(b) The court shall order the registry to pay the funds from a forfeited bond or security deposit to the obligee or person or entity entitled to receive child support payments in an amount that does not exceed the child support arrearages or, in the case of possession of or access to a child, to the person entitled to possession or access.

(c) The court may order that all or part of the forfeited amount be applied to pay attorney's fees and costs incurred by the person or entity bringing the motion for contempt or motion for forfeiture.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.111. FORFEITURE NOT DEFENSE TO CONTEMPT

The forfeiture of bond security is not a defense in a contempt proceeding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.112. JOINDER OF FORFEITURE AND CONTEMPT PROCEEDINGS

A motion for enforcement requesting contempt may be joined with a forfeiture proceeding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.113. APPLICATION OF BOND PENDING WRIT

If the obligor requests to execute a bond or to post security pending a hearing by an appellate court on a writ, the bond or security on forfeiture shall be payable to the obligee.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.114. FAILURE TO APPEAR

The court may order a capias to be issued for the arrest of the respondent if:

(1) the motion for enforcement requests contempt;

(2) the respondent was personally served; and

(3) the respondent fails to appear.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.115. DEFAULT JUDGMENT

(a) The court may render a default order for the relief requested if the respondent:

(1) has been personally served, has filed an answer, or has entered an appearance; and

(2) does not appear at the designated time, place, and date to respond to the motion.

(b) If the respondent fails to appear, the court may not hold the respondent in contempt but may order a capias to be issued.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 51, eff. Sept. 1, 1995.

SUBCHAPTER D. HEARING AND ENFORCEMENT ORDER

COMMENTS

A trial court must inform the respondent to a motion for enforcement of his Fifth Amendment right, his right to counsel, and his right to a jury if the movant is seeking incarceration for more than six months. Failure of the court to do so is grounds for the respondent's release at a future habeas corpus hearing. The movant's attorney should remind the trial judge to admonish the respondent before the hearing begins.

The respondent's Fifth Amendment right precludes the movant's counsel from calling the respondent as a witness but does not preclude defense counsel from calling him as a witness after the movant has rested.

RESOURCES

John F. Nichols, Jr., *Show Cause Hearings at Breakneck Speed*, So. Tex. Fam. L. Conf. (2009).

Sec. 157.161. RECORD

(a) Except as provided by Subsection (b), a record of the hearing in a motion for enforcement shall be made by a court reporter or as provided by Chapter 201.

(b) A record is not required if:

(1) the parties agree to an order; or

(2) the motion does not request incarceration and the parties waive the requirement of a record at the time of hearing, either in writing or in open court, and the court approves waiver.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.162. PROOF

(a) The movant is not required to prove that the underlying order is enforceable by contempt to obtain other appropriate enforcement remedies.

(b) A finding that the respondent is not in contempt does not preclude the court from awarding the petitioner court costs and reasonable attorney's fees or ordering any other enforcement remedy, including rendering a money judgment, posting a bond or other security, or withholding income.

(c) The movant may attach to the motion a copy of a payment record. The movant may subsequently update that payment record at the hearing. If a payment record was attached to the motion as authorized by this subsection, the payment record, as updated if applicable, is admissible to prove:

(1) the dates and in what amounts payments were made;

(2) the amount of any accrued interest;

(3) the cumulative arrearage over time; and

(4) the cumulative arrearage as of the final date of the record.

(c–1) A respondent may offer evidence controverting the contents of a payment record under Subsection (c).

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 649, Sec. 2, eff. June 14, 2013.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 649, Sec. 2, eff. June 14, 2013.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1189 (H.B. 779), Sec. 1, eff. June 15, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 15, eff. June 19, 2009. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 4, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 649 (H.B. 847), Sec. 1, eff. June 14, 2013. Acts 2013, 83rd Leg., R.S., Ch. 649 (H.B. 847), Sec. 2, eff. June 14, 2013.

COMMENTS

The 2013 legislature repealed the provision in this section that allowed an obligor to catch up on his child support prior to a contempt hearing and thus avoid a finding of contempt even if the obligor's failure to pay did violate the court's order. Thus, the holding in *In re Ezukanma*, 336 S.W.3d 389, 396 (Tex. App.—Fort Worth 2011, pet. denied), has been superseded by statute.

ANNOTATIONS

In re Ezukanma, 336 S.W.3d 389, 396 (Tex. App.—Fort Worth 2011, pet. denied). A trial court may not hold an obligor in contempt for failure to pay child support obligations when the obligor pays all arrearages due at the time the enforcement action was filed, even if new arrearages have accrued by the time of the enforcement hearing.

Sec. 157.163. APPOINTMENT OF ATTORNEY

(a) In a motion for enforcement or motion to revoke community service, the court must first determine whether incarceration of the respondent is a possible result of the proceedings.

(b) If the court determines that incarceration is a possible result of the proceedings, the court shall inform a respondent not represented by an attorney of the right to be represented by an attorney and, if the respondent is indigent, of the right to the appointment of an attorney.

(c) If the court determines that the respondent will not be incarcerated as a result of the proceedings, the court may require a respondent who is indigent to proceed without an attorney.

(d) If the respondent claims indigency and requests the appointment of an attorney, the court shall require the respondent to file an affidavit of indigency. The court may hear evidence to determine the issue of indigency.

(d–1) The court may conduct a hearing on the issue of indigency through the use of teleconferencing, videoconferencing, or other remote electronic means if the court determines that conducting the hearing in that manner will facilitate the hearing.

(e) Except as provided by Subsection (c), the court shall appoint an attorney to represent the respondent if the court determines that the respondent is indigent.

(f) If the respondent is not in custody, an appointed attorney is entitled to not less than 10 days from the date of the attorney's appointment to respond to the movant's pleadings and prepare for the hearing.

(g) If the respondent is in custody, an appointed attorney is entitled to not less than five days from the date the respondent was taken into custody to respond to the movant's pleadings and prepare for the hearing.

(h) The court may shorten or extend the time for preparation if the respondent and the respondent's attorney sign a waiver of the time limit.

(i) The scope of the court appointment of an attorney to represent the respondent is limited to the allegation of contempt or of violation of community supervision contained in the motion for enforcement or motion to revoke community supervision.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2017, 85th Leg., R.S., Ch. 961 (S.B. 1965), Sec. 2, eff. Sept. 1, 2017.

ANNOTATIONS

Ex parte Acker, 949 S.W.2d 314, 316 (Tex. 1997, orig. proceeding). This section "requires courts to admonish pro se litigants of their right to counsel, regardless of whether they are indigent."

In re Rivas-Luna, 528 S.W.3d 167, 172 (Tex. App.—El Paso 2017, no pet.). This section places the responsibility on the trial court to first determine whether incarceration is a possible result of a contempt proceeding, and, if so, to admonish relator of his or her right to counsel. Relator's right to counsel is not contingent on making a request for counsel. Relator's statement on the record that she could not afford an attorney and she would have to do the best she could was not sufficient to constitute a waiver of the right to counsel or an agreement to proceed pro se.

In re Marks, 365 S.W.3d 843 (Tex. App.—2012, orig. proceeding). An intelligent and voluntary waiver of the right to counsel under this section occurs when (1) the court admonishes the litigant of his right to counsel and (2) the litigant waives that right on the record.

Sec. 157.164. PAYMENT OF APPOINTED ATTORNEY

(a) An attorney appointed to represent an indigent respondent is entitled to a reasonable fee for services within the scope of the appointment in the amount set by the court.

(b) The fee shall be paid from the general funds of the county according to the schedule for the compensation of counsel appointed to defend criminal defendants as provided in the Code of Criminal Procedure.

(c) For purposes of this section, a proceeding in a court of appeals or the Supreme Court of Texas is considered the equivalent of a bona fide appeal to the Texas Court of Criminal Appeals.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.165. PROBATION OF CONTEMPT ORDER

The court may place the respondent on community supervision and suspend commitment if the court finds that the respondent is in contempt of court for failure or refusal to obey an order rendered as provided in this title.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.25, eff. Sept. 1, 1999.

Sec. 157.166. CONTENTS OF ENFORCEMENT ORDER

(a) An enforcement order must include:

(1) in ordinary and concise language the provisions of the order for which enforcement was requested;

(2) the acts or omissions that are the subject of the order;

(3) the manner of the respondent's noncompliance; and

(4) the relief granted by the court.

(b) If the order imposes incarceration or a fine for criminal contempt, an enforcement order must contain findings identifying, setting out, or incorporating by reference the provisions of the order for which enforcement was requested and the date of each occasion when the respondent's failure to comply with the order was found to constitute criminal contempt.

(c) If the enforcement order imposes incarceration for civil contempt, the order must state the specific conditions on which the respondent may be released from confinement.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 17, eff. Sept. 1, 1999.

ANNOTATIONS

Ex parte MacCallum, 807 S.W.2d 729, 730 (Tex. 1991, orig. proceeding) (per curiam). To support a judgment of contempt, the underlying decree must set forth the terms of compliance in clear, specific, and unambiguous terms so that the person charged with obeying the decree will readily know exactly what duties and obligations the court imposed upon him.

In re Davis, 372 S.W.3d 253, 256–57 (Tex. App.—Texarkana 2012, orig. proceeding). Because the Texas Constitution prohibits imprisonment for debt, a contempt order based solely on a failure to pay a debt is void. However, this provision does not apply for failure to follow a court order to perform a legal duty, such as the payment of child support.

In re Newby, 370 S.W.3d 463, 469–70 (Tex. App.—Fort Worth 2012, orig. proceeding). "[I]n this case, the trial court conditioned the relator's release on paying more than the amount the trial court had found the relator in contempt for failing to pay. . . . [I]n [similar] cases, the appellate courts modified the civil coercive contempt parts of the orders to delete the additional amounts that the relators were required to pay to purge themselves of contempt, retaining only the amounts for which the relators were actually held in contempt, because the courts were able to calculate what the purging amounts should be. . . . Therefore, having found error, we will modify the civil coercive contempt part of the order to reflect the correct . . . arrearage for which relator was actually held in contempt."

In re Davis, 305 S.W.3d 326, 332 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding). "[C]ompliance with Section 157.166 may be effected by (1) copying into the order the provisions for which enforcement was sought, (2) attaching as an exhibit a copy of the order for which enforcement was sought and incorporating it by reference, or (3) giving the volume and page numbers in the minutes of the court where the order and its pertinent language is located."

Sec. 157.167. RESPONDENT TO PAY ATTORNEY'S FEES AND COSTS

(a) If the court finds that the respondent has failed to make child support payments, the court shall order the respondent to pay the movant's reasonable attorney's fees and all court costs in addition to the arrearages. Fees and costs ordered under this subsection may be enforced by any means available for the enforcement of child support, including contempt.

(b) If the court finds that the respondent has failed to comply with the terms of an order providing for the possession of or access to a child, the court shall order the respondent to pay the movant's reasonable attorney's fees and all court costs in addition to any other remedy. If the court finds that the enforcement of the order with which the respondent failed to comply was necessary to ensure the child's physical or emotional health or welfare, the fees and costs ordered under this subsection may be enforced by any means available for the enforcement of child support, including contempt, but not including income withholding.

(c) Except as provided by Subsection (d), for good cause shown, the court may waive the requirement that the respondent pay attorney's fees and costs if the court states the reasons supporting that finding.

(d) If the court finds that the respondent is in contempt of court for failure or refusal to pay child support and that the respondent owes $20,000 or more in child support arrearages, the court may not waive the requirement that the respondent pay attorney's fees and costs unless the court also finds that the respondent:

(1) is involuntarily unemployed or is disabled; and

(2) lacks the financial resources to pay the attorney's fees and costs.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 18, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 477, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1262, Sec. 1, eff. Sept. 1, 2003. Reenacted and amended by Acts 2005, 79th Leg., Ch. 253 (H.B. 1174), Sec. 1, eff. September 1, 2005.

ANNOTATIONS

In re R.H.W. III, 542 S.W.3d 724, 744 (Tex. App.—Houston [14th Dist.] 2018, no pet. h.). While subsection 107.023(d) of the Family Code specifically authorizes the trial court to award amicus attorney's fees as necessaries for the benefit of the children in a suit affecting the parent-child relationship, subsection 157.167(a) limits the award of attorney's fees as child support to child support enforcement actions. Nothing in the Family Code's comprehensive scheme concerning awards of attorney's fees in SAPCRs equates "necessaries" with child support. Absent an express statutory provision authorizing an award of amicus attorney's fees to be characterized and enforced as additional child support, the trial court erred by awarding the amicus attorney's fees in this case as additional child support and providing for enforcement of its order by a wage withholding order.

Lewis v. Vasquez, No. 07-14-00170-CV, 2016 WL 1398505 (Tex. App.—Amarillo Apr. 7, 2016, no pet.) (mem. op.). It was not error for court to award attorney's fees and decline to segregate the modification and enforcement actions because an exception to the segregation requirement occurs when the services rendered are in connection with claims arising out of the same facts or transaction and their prosecution or defense requires proof or denial of essentially the same facts. Mother's suit for enforcement of child support and father's corresponding request to modify that support were essentially based on the same facts and thus did not fall within the fee segregation requirement.

In re McLaurin, 467 S.W.3d 561, 564–65 (Tex. App.—Houston [1st Dist.] 2015, no pet.). "In this case, [wife] argues that the contempt order is void because it imprisons her for failing to pay a debt—the attorney's fees assessed as sanctions. [Husband] argues that the contempt order is valid because it does not imprison [wife] for failure to pay a debt, but rather for failure to comply with a sanctions order requiring the payment of attorney's fees. We hold that the contempt order is void because it subjects [wife] to imprisonment for failure to pay a debt. Attorney's fees and costs awarded in proceedings to enforce child support payments are authorized by the Family Code, and the resulting obligation is not considered a debt and may be enforced through a contempt judgment. . . . Although a trial court is clearly

authorized to order the payment of costs and attorney's fees as sanctions . . . the obligation to pay created thereby is a debt and the debtor may not be imprisoned for failing to pay it. . . . [C]ontempt judgments ordering imprisonment for disobeying a sanctions order to pay attorneys' fees or costs are void as unconstitutional imprisonment for a debt."

Taylor v. Speck, 308 S.W.3d 81, 87 (Tex. App.—San Antonio 2012, no pet.). This section mandates an award of attorney's fees when a respondent has failed to make child support payments.

In re A.L.S., 338 S.W.3d 59, 70 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). A party with the burden of proof who fails to produce evidence of attorney's fees waives the party's right to those fees.

In re Moers, 104 S.W.3d 609, 611 (Tex. App.—Houston [1st Dist.] 2003, no pet.). Attorney's fees are permissibly taxed as child support when incurred during child support enforcement proceedings.

Sec. 157.168. ADDITIONAL PERIODS OF POSSESSION OR ACCESS

(a) A court may order additional periods of possession of or access to a child to compensate for the denial of court-ordered possession or access. The additional periods of possession or access:

(1) must be of the same type and duration of the possession or access that was denied;

(2) may include weekend, holiday, and summer possession or access; and

(3) must occur on or before the second anniversary of the date the court finds that court-ordered possession or access has been denied.

(b) The person denied possession or access is entitled to decide the time of the additional possession or access, subject to the provisions of Subsection (a)(1).

Added by Acts 1995, 74th Leg., ch. 751, Sec. 52, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 974, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1034, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. COMMUNITY SUPERVISION

Sec. 157.211. CONDITIONS OF COMMUNITY SUPERVISION

If the court places the respondent on community supervision and suspends commitment, the terms and conditions of community supervision may include the requirement that the respondent:

(1) report to the community supervision officer as directed;

(2) permit the community supervision officer to visit the respondent at the respondent's home or elsewhere;

(3) obtain counseling on financial planning, budget management, conflict resolution, parenting skills, alcohol or drug abuse, or other matters causing the respondent to fail to obey the order;

(4) pay required child support and any child support arrearages;

(5) pay court costs and attorney's fees ordered by the court;

(6) seek employment assistance services offered by the Texas Workforce Commission under Section 302.0035, Labor Code, if appropriate; and

(7) participate in mediation or other services to alleviate conditions that prevent the respondent from obeying the court's order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 946, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 311, Sec. 1, eff. Sept. 1, 2001.

ANNOTATIONS

In re Pierre, 50 S.W.3d 554, 559 (Tex. App.—El Paso 2001, orig. proceeding). Absent any evidence of drug abuse, a trial court abuses its discretion if it requires a contemnor to submit to drug and alcohol tests at his own expense.

Sec. 157.212. TERM OF COMMUNITY SUPERVISION

The initial period of community supervision may not exceed 10 years. The court may continue the community supervision beyond 10 years until the earlier of:

(1) the second anniversary of the date on which the community supervision first exceeded 10 years; or

(2) the date on which all child support, including arrearages and interest, has been paid.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1313, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 22, eff. September 1, 2007.

Sec. 157.213. COMMUNITY SUPERVISION FEES

(a) The court may require the respondent to pay a fee to the court in an amount equal to that required of a criminal defendant subject to community supervision.

(b) The court may make payment of the fee a condition of granting or continuing community supervision.

(c) The court shall deposit the fees received under this subchapter as follows:

(1) if the community supervision officer is employed by a community supervision and corrections department, in the special fund of the county treasury provided by the Code of Criminal Procedure to be used for community supervision; or

(2) if the community supervision officer is employed by a domestic relations office, in one of the following funds, as determined by the office's administering entity:

(A) the general fund for the county in which the domestic relations office is located; or

(B) the office fund established by the administering entity for the domestic relations office.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 311, Sec. 2, eff. Sept. 1, 2001.

Sec. 157.214. MOTION TO REVOKE COMMUNITY SUPERVISION

A prosecuting attorney, the Title IV-D agency, a domestic relations office, or a party affected by the order may file a verified motion alleging specifically that certain conduct of the respondent constitutes a violation of the terms and conditions of community supervision.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 311, Sec. 3, eff. Sept. 1, 2001.

ANNOTATIONS

In re Zandi, 270 S.W.3d 76, 77 (Tex. 2008, orig. proceeding) (per curiam). "[W]hen a person appears at a status hearing set by the court in a contempt or commitment order as a condition of suspension of his sentence for failure to pay child support, without notice of any assertion that suspension will be revoked, the court cannot revoke suspension without notice and a second hearing."

Sec. 157.215. ARREST FOR ALLEGED VIOLATION OF COMMUNITY SUPERVISION

(a) If the motion to revoke community supervision alleges a prima facie case that the respondent has violated a term or condition of community supervision, the court may order the respondent's arrest by warrant.

(b) The respondent shall be brought promptly before the court ordering the arrest.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.216. HEARING ON MOTION TO REVOKE COMMUNITY SUPERVISION

(a) The court shall hold a hearing without a jury not later than the third working day after the date the respondent is arrested under Section 157.215. If the court is unavailable for a hearing on that date, the hearing shall be held not later than the third working day after the date the court becomes available.

(b) The hearing under this section may not be held later than the seventh working day after the date the respondent is arrested.

(c) After the hearing, the court may continue, modify, or revoke the community supervision.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 23, eff. September 1, 2007.

ANNOTATIONS

In re B.C.C., 187 S.W.3d 721, 724 (Tex. App.—Tyler 2006, no pet.). The standard of proof in a motion to revoke is by a preponderance of the evidence. To satisfy this burden of proof, one must prove that the greater weight of the credible evidence before the trial court creates a reasonable belief that a condition of community supervision has been violated. Proof of any one alleged violation is sufficient to support an order revoking community service.

Sec. 157.217. DISCHARGE FROM COMMUNITY SUPERVISION

(a) When a community supervision period has been satisfactorily completed, the court on its own motion shall discharge the respondent from community supervision.

(b) The court may discharge the respondent from community supervision on the motion of the respondent if the court finds that the respondent:

(1) has satisfactorily completed one year of community supervision; and

(2) has fully complied with the community supervision order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

SUBCHAPTER F. JUDGMENT AND INTEREST

COMMENTS

In 2001, the legislature changed the interest rate on unpaid child support from 12 percent to 6 percent. The change became effective January 1, 2002, and applies to every child support payment that became due on or after that date as well as all existing, but unconfirmed, child support arrearages. Thus, child support accrued before January 1, 2002, bore interest at the rate of 12 percent until January 1, 2002. Arrearages and future payments from that point forward carry interest at 6 percent.

RESOURCES

Karen L. Marvel, *Creative Ways to Enforce & Collect Child Support Claims*, State Bar Col. Summer School (2010).

Sec. 157.261. UNPAID CHILD SUPPORT AS JUDGMENT

(a) A child support payment not timely made constitutes a final judgment for the amount due and owing, including interest as provided in this chapter.

(b) For the purposes of this subchapter, interest begins to accrue on the date the judge signs the order for the judgment unless the order contains a statement that the order is rendered on another specific date.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 5, eff. Sept. 1, 1997.

ANNOTATIONS

Herzfeld v. Herzfeld, 285 S.W.3d 122, 129 (Tex. App.—Dallas 2009, no pet.). A trial court does not have discretion to increase or reduce a child support arrearage or interest on the arrearage.

In re J.I.M., 281 S.W.3d 504, 509 (Tex. App.—El Paso 2008, pet. denied). "Whether a modification motion is pending or not, once a child support payment has come due, any non-payment constitutes an arrearage upon which the trial court must enter a judgment pursuant to an enforcement motion."

Sec. 157.263. CONFIRMATION OF ARREARAGES

(a) If a motion for enforcement of child support requests a money judgment for arrearages, the court shall confirm the amount of arrearages and render one cumulative money judgment.

(b) A cumulative money judgment includes:

(1) unpaid child support not previously confirmed;

(2) the balance owed on previously confirmed arrearages or lump sum or retroactive support judgments;

(3) interest on the arrearages; and

(4) a statement that it is a cumulative judgment.

(b–1) In rendering a money judgment under this section, the court may not reduce or modify the amount of child support arrearages but, in confirming the amount of arrearages, may allow a counterclaim or offset as provided by this title.

(c) If the amount of arrearages confirmed by the court reflects a credit to the obligor for support arrearages collected from a federal tax refund under 42 U.S.C. Section 664, and, subsequently, the amount of that credit is reduced because the refund was adjusted because of an injured spouse claim by

a jointly filing spouse, the tax return was amended, the return was audited by the Internal Revenue Service, or for another reason permitted by law, the court shall render a new cumulative judgment to include as arrearages an amount equal to the amount by which the credit was reduced.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 610, Sec. 4, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 24, eff. September 1, 2007. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 5, eff. September 1, 2011.

ANNOTATIONS

Ochsner v. Ochsner, No. 14-0638, 2016 WL 3537255 (Tex. June 24, 2016). A trial court in a child support enforcement proceeding under Family Code chapter 157—a wholly separate action from the initial child support order proceeding under Family Code chapter 154—may consider evidence of direct payments to third parties (e.g., daycare or private school) when confirming the amount of arrearages.

In re Phillips, 496 S.W.3d 769 (Tex. 2016). In an enforcement where unpaid child support is sought to be paid on behalf of a party that recovers compensation from the state comptroller under the Tim Cole Act for individuals who were wrongfully imprisoned, the comptroller is not bound by a child support enforcement judgment rendered by a court but has the exclusive authority to consider the applicable law regarding child support arrearages and make his own mathematic calculation as to the proper amount of compensation under the statute.

Holmes v. Williams, 355 S.W.3d 215, 219 (Tex. App.—Houston [1st Dist.] 2011, no pet.). "A cumulative money judgment for past-due child support results only after the obligee files a motion for the enforcement of child support requesting a money judgment for arrearage."

In re A.C.B., 302 S.W.3d 560, 566 (Tex. App.—Amarillo 2009, no pet.). "[T]he trial court has no discretion to modify, forgive, or make equitable adjustments in awarding interest on child support arrearages."

Sec. 157.264. ENFORCEMENT OF JUDGMENT

(a) A money judgment rendered as provided in this subchapter or a judgment for retroactive child support rendered under Chapter 154 may be enforced by any means available for the enforcement of a judgment for debts or the collection of child support.

(b) The court shall render an order requiring that the obligor make periodic payments on the judgment, including by income withholding under Chapter 158 if the obligor is subject to income withholding.

(c) An order rendered under Subsection (b) does not preclude or limit the use of any other means for enforcement of the judgment.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 16, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 25, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 17, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 6, eff. September 1, 2015.

Sec. 157.265. ACCRUAL OF INTEREST ON CHILD SUPPORT

(a) Interest accrues on the portion of delinquent child support that is greater than the amount of the monthly periodic support obligation at the rate of six percent simple interest per year from the date the support is delinquent until the date the support is paid or the arrearages are confirmed and reduced to money judgment.

(b) Interest accrues on child support arrearages that have been confirmed and reduced to money judgment as provided in this subchapter at the rate of six percent simple interest per year from the date the order is rendered until the date the judgment is paid.

(c) Interest accrues on a money judgment for retroactive or lump-sum child support at the annual rate of six percent simple interest from the date the order is rendered until the judgment is paid.

(d) Subsection (a) applies to a child support payment that becomes due on or after January 1, 2002.

(e) Child support arrearages in existence on January 1, 2002, that were not confirmed and reduced to a money judgment on or before that date accrue interest as follows:

(1) before January 1, 2002, the arrearages are subject to the interest rate that applied to the arrearages before that date; and

(2) on and after January 1, 2002, the cumulative total of arrearages and interest accumulated on those arrearages described by Subdivision (1) is subject to Subsection (a).

(f) Subsections (b) and (c) apply to a money judgment for child support rendered on or after January 1, 2002. A money judgment for child support rendered before that date is governed by the law in effect on the date the judgment was rendered, and the former law is continued in effect for that purpose.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 53, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 943, Sec. 1, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1491, Sec. 1, eff. Jan. 1, 2002. Amended by: Acts 2005, 79th Leg., Ch. 185 (H.B. 678), Sec. 1, eff. May 27, 2005.

ANNOTATIONS

In re M.C.C., 187 S.W.3d 383, 384 (Tex. 2006) (per curiam). The amendment to this section lowering interest rates from 12 percent to 6 percent interest is not retroactive.

Sec. 157.266. Date of Delinquency

(a) A child support payment is delinquent for the purpose of accrual of interest if the payment is not received before the 31st day after the payment date stated in the order by:

(1) the local registry, Title IV-D registry, or state disbursement unit; or

(2) the obligee or entity specified in the order, if payments are not made through a registry.

(b) If a payment date is not stated in the order, a child support payment is delinquent if payment is not received by the registry or the obligee or entity specified in the order on the date that an amount equal to the support payable for one month becomes past due.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 943, Sec. 2, eff. Jan. 1, 2000.

Sec. 157.267. Interest Enforced as Child Support

Accrued interest is part of the child support obligation and may be enforced by any means provided for the collection of child support.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.268. Application of Child Support Payment

Child support collected shall be applied in the following order of priority:

(1) current child support;

(2) non-delinquent child support owed;

(3) the principal amount of child support that has not been confirmed and reduced to money judgment;

(4) the principal amount of child support that has been confirmed and reduced to money judgment;

(5) interest on the principal amounts specified in Subdivisions (3) and (4); and

(6) the amount of any ordered attorney's fees or costs, or Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 17, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 20, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 18, eff. January 1, 2010.

Sec. 157.269. RETENTION OF JURISDICTION

A court that renders an order providing for the payment of child support retains continuing jurisdiction to enforce the order, including by adjusting the amount of the periodic payments to be made by the obligor or the amount to be withheld from the obligor's disposable earnings, until all current support, medical support, dental support, and child support arrearages, including interest and any applicable fees and costs, have been paid.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 54, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 19, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 26, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 30, eff. September 1, 2018.

ANNOTATIONS

In re Dryden, 52 S.W.3d 257, 265 (Tex. App.—Corpus Christi 2001, orig. proceeding). This section does not allow a trial court to modify a judgment for child support arrearages after the court's plenary power has expired.

SUBCHAPTER G. CHILD SUPPORT LIEN

RESOURCES

Cindy V. Tisdale, *Collecting Child Support*, Adv. Fam. L. (2010).

Sec. 157.311. DEFINITIONS

In this chapter:

(1) "Account" means:

(A) any type of a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, mutual fund account, certificate of deposit, or any other instrument of deposit in which an individual has a beneficial ownership either in its entirety or on a shared or multiple party basis, including any accrued interest and dividends; and

(B) an insurance policy, including a life insurance policy or annuity contract, in which an individual has a beneficial ownership or against which an individual may file a claim or counterclaim.

(2) "Claimant" means:

(A) the obligee or a private attorney representing the obligee;

(B) the Title IV-D agency providing child support services;

(C) a domestic relations office or local registry; or

(D) an attorney appointed as a friend of the court.

(3) "Court having continuing jurisdiction" is the court of continuing, exclusive jurisdiction in this state or a tribunal of another state having jurisdiction under the Uniform Interstate Family Support Act or a substantially similar act.

(4) "Financial institution" has the meaning assigned by 42 U.S.C. Section 669a(d)(1) and includes a depository institution, depository institution holding company as defined by 12 U.S.C. Section 1813(w), credit union, benefit association, insurance company, mutual fund, and any similar entity authorized to do business in this state.

(5) "Lien" means a child support lien issued in this or another state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 19, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 18, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 5, eff. Sept. 1, 2003. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 6, eff. September 1, 2011.

Sec. 157.312. GENERAL PROVISIONS

(a) A claimant may enforce child support by a lien as provided in this subchapter.

(b) The remedies provided by this subchapter do not affect the availability of other remedies provided by law.

(c) The lien is in addition to any other lien provided by law.

(d) A child support lien arises by operation of law against real and personal property of an obligor for all amounts of child support due and owing, including any accrued interest, regardless of whether the amounts have been adjudicated or otherwise determined, subject to the requirements of this subchapter for perfection of the lien.

(e) A child support lien arising in another state may be enforced in the same manner and to the same extent as a lien arising in this state.

(f) A foreclosure action under this subchapter is not required as a prerequisite to levy and execution on a judicial or administrative determination of arrearages as provided by Section 157.327.

(g) A child support lien under this subchapter may not be directed to an employer to attach to the disposable earnings of an obligor paid by the employer.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 20, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 19, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 6, eff. Sept. 1, 2003.

ANNOTATIONS

In re R.C.T., 294 S.W.3d 238 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). Nothing in this section requires the child support to be an arrearage to trigger the attachment of the lien. The child support must be only "due and owing." A payout schedule to satisfy due and owing child support does not prevent the creation of a lien under this section.

Sec. 157.313. CONTENTS OF CHILD SUPPORT LIEN NOTICE

(a) Except as provided by Subsection (e), a child support lien notice must contain:

(1) the name and address of the person to whom the notice is being sent;

(2) the style, docket or cause number, and identity of the tribunal of this or another state having continuing jurisdiction of the child support action and, if the case is a Title IV-D case, the case number;

(3) the full name, address, and, if known, the birth date, driver's license number, social security number, and any aliases of the obligor;

(4) the full name and, if known, social security number of the obligee;

(5) the amount of the current or prospective child support obligation, the frequency with which current or prospective child support is ordered to be paid, and the amount of child support arrearages owed by the obligor and the date of the signing of the court order, administrative order, or writ that determined the arrearages or the date and manner in which the arrearages were determined;

(6) the rate of interest specified in the court order, administrative order, or writ or, in the absence of a specified interest rate, the rate provided for by law;

(7) the name and address of the person or agency asserting the lien;

(8) the motor vehicle identification number as shown on the obligor's title if the property is a motor vehicle;

(9) a statement that the lien attaches to all nonexempt real and personal property of the obligor that is located or recorded in the state, including any property specifically identified in the notice and any property acquired after the date of filing or delivery of the notice;

(10) a statement that any ordered child support not timely paid in the future constitutes a final judgment for the amount due and owing, including interest, and accrues up to an amount that may not exceed the lien amount; and

(11) a statement that the obligor is being provided a copy of the lien notice and that the obligor may dispute the arrearage amount by filing suit under Section 157.323.

(b) A claimant may include any other information that the claimant considers necessary.

(c) Except as provided by Subsection (e), the lien notice must be verified.

(d) A claimant must file a notice for each after-acquired motor vehicle.

(e) A notice of a lien for child support under this section may be in the form authorized by federal law or regulation. The federal form of lien notice does not require verification when used by the Title IV-D agency.

(f) The requirement under Subsections (a)(3) and (4) to provide a social security number, if known, does not apply to a lien notice for a lien on real property.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 20, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 27, eff. September 1, 2007.

ANNOTATIONS

In re R.M.R., No. 05-14-01247-CV, 2016 WL 1321141 (Tex. App.—Dallas Apr. 5, 2016, no pet.) (mem. op.). Default judgment against third party reversed after appellate court found that the party seeking to enforce a child support lien

failed to provide sufficient proof that third party had notice that the lien was valid or had notice of the contents of the lien.

Sec. 157.314. Filing Lien Notice or Abstract of Judgment; Notice to Obligor

(a) A child support lien notice or an abstract of judgment for past due child support may be filed by the claimant with the county clerk of:

(1) any county in which the obligor is believed to own nonexempt real or personal property;

(2) the county in which the obligor resides; or

(3) the county in which the court having continuing jurisdiction has venue of the suit affecting the parent-child relationship.

(b) A child support lien notice may be filed with or delivered to the following, as appropriate:

(1) the clerk of the court in which a claim, counterclaim, or suit by, or on behalf of, the obligor, including a claim or potential right to proceeds from an estate as an heir, beneficiary, or creditor, is pending, provided that a copy of the lien is mailed to the attorney of record for the obligor, if any;

(2) an attorney who represents the obligor in a claim or counterclaim that has not been filed with a court;

(3) any other individual or organization believed to be in possession of real or personal property of the obligor; or

(4) any governmental unit or agency that issues or records certificates, titles, or other indicia of property ownership.

(c) Not later than the 21st day after the date of filing or delivering the child support lien notice, the claimant shall provide a copy of the notice to the obligor by first class or certified mail, return receipt requested, addressed to the obligor at the obligor's last known address. If another person is known to have an ownership interest in the property subject to the lien, the claimant shall provide a copy of the lien notice to that person at the time notice is provided to the obligor.

(d) If a child support lien notice is delivered to a financial institution with respect to an account of the obligor, the institution shall immediately:

(1) provide the claimant with the last known address of the obligor; and

(2) notify any other person having an ownership interest in the account that the account has been frozen in an amount not to exceed the amount of the child support arrearage identified in the notice.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 21, eff. Sept. 1, 2001.

ANNOTATIONS

Herzfeld v. Herzfeld, 285 S.W.3d 122, 129 (Tex. App.—Dallas 2009, no pet.). A child support lien arises without action by the court, as long as the notice of lien complies with the statutory requirements.

Sec. 157.3145. SERVICE ON FINANCIAL INSTITUTION

(a) Service of a child support lien notice on a financial institution relating to property held by the institution in the name of, or in behalf of, an obligor is governed by Section 59.008, Finance Code, if the institution is subject to that law, or may be delivered to the registered agent, the institution's main business office in this state, or another address provided by the institution under Section 231.307.

(b) A financial institution doing business in this state shall comply with the notice of lien and levy under this section regardless of whether the institution's corporate headquarters is located in this state.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 22, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 610, Sec. 7, eff. Sept. 1, 2003.

Sec. 157.315. RECORDING AND INDEXING LIEN

(a) On receipt of a child support lien notice, the county clerk shall immediately record the notice in the county judgment records as provided in Chapter 52, Property Code.

(b) The county clerk may not charge the Title IV-D agency, a domestic relations office, a friend of the court, or any other party a fee for recording the notice of a lien. To qualify for this exemption, the lien notice must be styled "Notice of Child Support Lien" or be in the form authorized by federal law or regulation.

(c) The county clerk may not charge the Title IV-D agency, a domestic relations office, or a friend of the court a fee for recording the release of a child support lien. The lien release must be styled "Release of Child Support Lien."

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 595, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 769, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 23, eff. Sept. 1, 2001.

Sec. 157.316. PERFECTION OF CHILD SUPPORT LIEN

(a) Except as provided by Subsection (b), a child support lien is perfected when an abstract of judgment for past due child support or a child support lien notice is filed or delivered as provided by Section 157.314.

(b) If a lien established under this subchapter attaches to a motor vehicle, the lien must be perfected in the manner provided by Chapter 501, Transportation Code, and the court or Title IV-D agency that rendered the order of child support shall include in the order a requirement that the obligor surrender to the court or Title IV-D agency evidence of the legal ownership of the motor vehicle against which the lien may attach. A lien against a motor vehicle under this subchapter is not perfected until the obligor's title to the vehicle has been surrendered to the court or Title IV-D agency and the Texas Department of Motor Vehicles has issued a subsequent title that discloses on its face the fact that the vehicle is subject to a child support lien under this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 24, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3C.01, eff. September 1, 2009.

Sec. 157.317. PROPERTY TO WHICH LIEN ATTACHES

(a) A child support lien attaches to all real and personal property not exempt under the Texas Constitution or other law, including:

(1) an account in a financial institution;

(2) a retirement plan, including an individual retirement account;

(3) the proceeds of an insurance policy, including the proceeds from a life insurance policy or annuity contract and the proceeds from the sale or assignment of life insurance or annuity benefits, a claim for compensation, or a settlement or award for the claim for compensation, due to or owned by the obligor;

(4) property seized and subject to forfeiture under Chapter 59, Code of Criminal Procedure; and

(5) the proceeds derived from the sale of oil or gas production from an oil or gas well located in this state.

(a–1) A lien attaches to all property owned or acquired on or after the date the lien notice or abstract of judgment is filed with the county clerk of the county in which the property is located, with the court clerk as to property or claims in litigation, or, as to property of the obligor in the possession or control of a third party, from the date the lien notice is delivered to that party.

(b) A lien attaches to all nonhomestead real property of the obligor but does not attach to a homestead exempt under the Texas Constitution or the Property Code.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 24, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 344, Sec. 7.007, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, Sec. 20, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 25, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 8, eff. Sept. 1, 2003. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 28, eff. September 1, 2007. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 7, eff. September 1, 2011. Acts 2017, 85th Leg., R.S., Ch. 961 (S.B. 1965), Sec. 3, eff. Sept. 1, 2017.

ANNOTATIONS

Jack v. Allstate Life Insurance Co: (In re Jack), 390 B.R. 307 (Bankr. S.D. Tex. 2008). Under Texas law, a child support lien attaches only to nonexempt property owned by the obligor at the time the notice of lien is delivered to the holder of the property or when the abstract is filed.

Sec. 157.3171. RELEASE OF LIEN ON HOMESTEAD PROPERTY

(a) An obligor who believes that a child support lien has attached to real property of the obligor that is the obligor's homestead, as defined by Section 41.002, Property Code, may file an affidavit to release the lien against the homestead in the same manner that a judgment debtor may file an affidavit under Section 52.0012, Property Code, to release a judgment lien against a homestead.

(b) Except as provided by Subsection (c), the obligor must comply with all requirements imposed by Section 52.0012, Property Code. For purposes of complying with that section, the obligor is considered to be a judgment debtor under that section and the claimant under the child support lien is considered to be a judgment creditor under that section.

(c) For purposes of Section 52.0012(d)(2), Property Code, and the associated text in the affidavit required by Section 52.0012(f), Property Code, the obligor is required only to send the letter and affida-

vit described in those provisions to the claimant under the child support lien at the claimant's last known address.

(d) The claimant under the child support lien may dispute the obligor's affidavit by filing a contradicting affidavit in the manner provided by Section 52.0012(e), Property Code.

(e) Subject to Subsection (f), an affidavit filed by an obligor under this section has the same effect with respect to a child support lien as an affidavit filed under Section 52.0012, Property Code, has with respect to a judgment lien.

(f) If the claimant files a contradicting affidavit as described by Subsection (d), the issue of whether the real property is subject to the lien must be resolved in an action brought for that purpose in the district court of the county in which the real property is located and the lien was filed.

Added by Acts 2009, 81st Leg., R.S., Ch. 164 (S.B. 1661), Sec. 1, eff. May 26, 2009.

Sec. 157.318. DURATION AND EFFECT OF CHILD SUPPORT LIEN

(a) Subject to Subsection (d), a lien is effective until all current support and child support arrearages, including interest, any costs and reasonable attorney's fees, and any Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible, have been paid or the lien is otherwise released as provided by this subchapter.

(b) The lien secures payment of all child support arrearages owed by the obligor under the underlying child support order, including arrearages that accrue after the lien notice was filed or delivered as provided by Section 157.314.

(c) The filing of a lien notice or abstract of judgment with the county clerk is a record of the notice and has the same effect as any other lien notice with respect to real property records.

(d) A lien is effective with respect to real property until the 10th anniversary of the date on which the lien notice was filed with the county clerk. A lien subject to the limitation prescribed by this subsection may be renewed for subsequent 10-year periods by filing a renewed lien notice in the same manner as the original lien notice. For purposes of establishing priority, a renewed lien notice filed before the applicable 10th anniversary relates back to the date the original lien notice was filed. A renewed lien notice filed on or after the applicable 10th anniversary has priority over any other lien recorded with respect to the real property only on the basis of the date the renewed lien notice is filed.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 26, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 29, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 164 (S.B. 1661), Sec. 2, eff. May 26, 2009.

Sec. 157.319. EFFECT OF LIEN NOTICE

(a) If a person having actual notice of the lien possesses nonexempt personal property of the obligor that may be subject to the lien, the property may not be paid over, released, sold, transferred, encumbered, or conveyed unless:

(1) a release of lien signed by the claimant is delivered to the person in possession; or

(2) a court, after notice to the claimant and hearing, has ordered the release of the lien because arrearages do not exist.

(b) A person having notice of a child support lien who violates this section may be joined as a party to a foreclosure action under this chapter and is subject to the penalties provided by this subchapter.

(c) This section does not affect the validity or priority of a lien of a health care provider, a lien for attorney's fees, or a lien of a holder of a security interest. This section does not affect the assignment of rights or subrogation of a claim under Title XIX of the federal Social Security Act (42 U.S.C. Section 1396 et seq.), as amended.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 26, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 27, eff. Sept. 1, 2001.

Sec. 157.320. PRIORITY OF LIEN AS TO REAL PROPERTY

(a) A lien created under this subchapter does not have priority over a lien or conveyance of an interest in the nonexempt real property recorded before the child support lien notice is recorded in the county where the real property is located.

(b) A lien created under this subchapter has priority over any lien or conveyance of an interest in the nonexempt real property recorded after the child support lien notice is recorded in the county clerk's office in the county where the property of the obligor is located.

(c) A conveyance of real property by the obligor after a lien notice has been recorded in the county where the real property is located is subject to the lien and may not impair the enforceability of the lien against the real property.

(d) A lien created under this subchapter is subordinate to a vendor's lien retained in a conveyance to the obligor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 27, eff. Sept. 1, 1997.

Sec. 157.321. DISCRETIONARY RELEASE OF LIEN

A child support lien claimant may at any time release a lien on all or part of the property of the obligor or return seized property, without liability, if assurance of payment is considered adequate by the claimant or if the release or return will facilitate the collection of the arrearages. The release or return may not operate to prevent future action to collect from the same or other property owned by the obligor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 28, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 28, eff. Sept. 1, 2001.

Sec. 157.322. MANDATORY RELEASE OF LIEN

(a) On payment in full of the amount of child support due, together with any costs and reasonable attorney's fees, the child support lien claimant shall execute and deliver to the obligor or the obligor's attorney a release of the child support lien.

(b) The release of the child support lien is effective when:

(1) filed with the county clerk with whom the lien notice or abstract of judgment was filed; or

(2) delivered to any other individual or organization that may have been served with a lien notice under this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 29, 97(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 29, eff. Sept. 1, 2001.

ANNOTATIONS

In re J.P., 296 S.W.3d 830, 835 (Tex. App.—Fort Worth 2009, no pet.). A release of a child support lien is a contract, subject to the rules of contract construction. If a release is valid on its face, it constitutes prima facie proof of payment. The burden then shifts to the party denying the validity of the release to prove otherwise.

Sec. 157.323. FORECLOSURE OR SUIT TO DETERMINE ARREARAGES

(a) In addition to any other remedy provided by law, an action to foreclose a child support lien, to dispute the amount of arrearages stated in the lien, or to resolve issues of ownership interest with respect to property subject to a child support lien may be brought in:

(1) the court in which the lien notice was filed under Section 157.314(b)(1);

(2) the district court of the county in which the property is or was located and the lien was filed; or

(3) the court of continuing jurisdiction.

(b) The procedures provided by Subchapter B apply to a foreclosure action under this section, except that a person or organization in possession of the property of the obligor or known to have an ownership interest in property that is subject to the lien may be joined as an additional respondent.

(c) If arrearages are owed by the obligor, the court shall:

(1) render judgment against the obligor for the amount due, plus costs and reasonable attorney's fees;

(2) order any official authorized to levy execution to satisfy the lien, costs, and attorney's fees by selling any property on which a lien is established under this subchapter; or

(3) order an individual or organization in possession of nonexempt personal property or cash owned by the obligor to dispose of the property as the court may direct.

(d) For execution and sale under this section, publication of notice is necessary only for three consecutive weeks in a newspaper published in the county where the property is located or, if there is no newspaper in that county, in the most convenient newspaper in circulation in the county.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 30, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 30, eff. Sept. 1, 2001.

Sec. 157.324. LIABILITY FOR FAILURE TO COMPLY WITH ORDER OR LIEN

A person who knowingly disposes of property subject to a child support lien or who, after a foreclosure hearing, fails to surrender on demand nonexempt personal property as directed by a court under this subchapter is liable to the claimant in an amount equal to the value of the property disposed of or not

surrendered, not to exceed the amount of the child support arrearages for which the lien or foreclosure judgment was issued.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 12, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 31, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 31, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 30, eff. September 1, 2007.

Sec. 157.325. RELEASE OF EXCESS FUNDS TO DEBTOR OR OBLIGOR

(a) If a person has in the person's possession earnings, deposits, accounts, balances, or other funds or assets of the obligor, including the proceeds of a judgment or other settlement of a claim or counterclaim due to the obligor that are in excess of the amount of arrearages specified in the child support lien, the holder of the nonexempt personal property or the obligor may request that the claimant release any excess amount from the lien. The claimant shall grant the request and discharge any lien on the excess amount unless the security for the arrearages would be impaired.

(b) If the claimant refuses the request, the holder of the personal property or the obligor may file suit under this subchapter for an order determining the amount of arrearages and discharging excess personal property or money from the lien.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 13, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 32, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 32, eff. Sept. 1, 2001.

Sec. 157.326. INTEREST OF OBLIGOR'S SPOUSE OR ANOTHER PERSON HAVING OWNERSHIP INTEREST

(a) A spouse of an obligor or another person having an ownership interest in property that is subject to a child support lien may file suit under Section 157.323 to determine the extent, if any, of the spouse's or other person's interest in real or personal property that is subject to:

(1) a lien perfected under this subchapter; or

(2) an action to foreclose under this subchapter.

(b) After notice to the obligor, the obligor's spouse, any other person alleging an ownership interest, the claimant, and the obligee, the court shall conduct a hearing and determine the extent, if any, of the ownership interest in the property held by the obligor's spouse or other person. If the court finds that:

(1) the property is the separate property of the obligor's spouse or the other person, the court shall order that the lien against the property be released and that any action to foreclose on the property be dismissed;

(2) the property is jointly owned by the obligor and the obligor's spouse, the court shall determine whether the sale of the obligor's interest in the property would result in an unreasonable hardship on the obligor's spouse or family and:

(A) if so, the court shall render an order that the obligor's interest in the property not be sold and that the lien against the property should be released; or

(B) if not, the court shall render an order partitioning the property and directing that the property be sold and the proceeds applied to the child support arrearages; or

(3) the property is owned in part by another person, other than the obligor's spouse, the court shall render an order partitioning the property and directing that the obligor's share of the property be applied to the child support arrearages.

(c) In a proceeding under this section, the spouse or other person claiming an ownership interest in the property has the burden to prove the extent of that ownership interest.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 33, eff. Sept. 1, 2001.

Sec. 157.327. EXECUTION AND LEVY ON FINANCIAL ASSETS OF OBLIGOR

(a) Notwithstanding any other provision of law, if a judgment or administrative determination of arrearages has been rendered, a claimant may deliver a notice of levy to any financial institution possessing or controlling assets or funds owned by, or owed to, an obligor and subject to a child support lien, including a lien for child support arising in another state.

(b) The notice under this section must:

(1) identify the amount of child support arrearages owing at the time the amount of arrearages was determined or, if the amount is less, the amount of arrearages owing at the time the notice is prepared and delivered to the financial institution; and

(2) direct the financial institution to pay to the claimant, not earlier than the 15th day or later than the 21st day after the date of delivery of the notice, an amount from the assets of the obligor or from funds due to the obligor that are held or controlled by the institution, not to exceed the amount of the child support arrearages identified in the notice, unless:

(A) the institution is notified by the claimant that the obligor has paid the arrearages or made arrangements satisfactory to the claimant for the payment of the arrearages;

(B) the obligor or another person files a suit under Section 157.323 requesting a hearing by the court; or

(C) if the claimant is the Title IV-D agency, the obligor has requested an agency review under Section 157.328.

(c) A financial institution that receives a notice of levy under this section may not close an account in which the obligor has an ownership interest, permit a withdrawal from any account the obligor owns, in whole or in part, or pay funds to the obligor so that any amount remaining in the account is less than the amount of the arrearages identified in the notice, plus any fees due to the institution and any costs of the levy identified by the claimant.

(d) A financial institution that receives a notice of levy under this section shall notify any other person having an ownership interest in an account in which the obligor has an ownership interest that the account has been levied on in an amount not to exceed the amount of the child support arrearages identified in the notice of levy.

(e) The notice of levy may be delivered to a financial institution as provided by Section 59.008, Finance Code, if the institution is subject to that law or may be delivered to the registered agent, the institution's main business office in this state, or another address provided by the institution under Section 231.307.

(f) A financial institution may deduct the fees and costs identified in Subsection (c) from the obligor's assets before paying the appropriate amount to the claimant.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 34, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 31, eff. September 1, 2007.

Sec. 157.3271. LEVY ON FINANCIAL INSTITUTION ACCOUNT OF DECEASED OBLIGOR

(a) Subject to Subsection (b), the Title IV-D agency may, not earlier than the 90th day after the date of death of an obligor in a Title IV-D case, deliver a notice of levy to a financial institution in which the obligor was the sole owner of an account, regardless of whether the Title IV-D agency has issued a child support lien notice regarding the account.

(b) The Title IV-D agency may not deliver a notice of levy under this section if probate proceedings relating to the obligor's estate have commenced.

(c) The notice of levy must:

(1) identify the amount of child support arrearages determined by the Title IV-D agency to be owing and unpaid by the obligor on the date of the obligor's death; and

(2) direct the financial institution to pay to the Title IV-D agency, not earlier than the 45th day or later than the 60th day after the date of delivery of the notice, an amount from the assets of the obligor or from funds due to the obligor that are held or controlled by the institution, not to exceed the amount of the child support arrearages identified in the notice.

(d) Not later than the 35th day after the date of delivery of the notice, the financial institution must notify any other person asserting a claim against the account that:

(1) the account has been levied on for child support arrearages in the amount shown on the notice of levy; and

(2) the person may contest the levy by filing suit and requesting a court hearing in the same manner that a person may challenge a child support lien under Section 157.323.

(e) A person who contests a levy under this section, as authorized by Subsection (d)(2), may bring the suit in:

(1) the district court of the county in which the property is located or in which the obligor resided; or

(2) the court of continuing jurisdiction.

(f) The notice of levy may be delivered to a financial institution as provided by Section 59.008, Finance Code, if the institution is subject to that law or may be delivered to the registered agent, the institution's main business office in this state, or another address provided by the institution under Section 231.307.

(g) A financial institution may deduct its fees and costs, including any costs for complying with this section, from the deceased obligor's assets before paying the appropriate amount to the Title IV-D agency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 8, eff. September 1, 2011.

Sec. 157.328. NOTICE OF LEVY SENT TO OBLIGOR

(a) At the time the notice of levy under Section 157.327 is delivered to a financial institution, the claimant shall serve the obligor with a copy of the notice.

(b) The notice of levy delivered to the obligor must inform the obligor that:

(1) the claimant will not proceed with levy if, not later than the 10th day after the date of receipt of the notice, the obligor pays in full the amount of arrearages identified in the notice or otherwise makes arrangements acceptable to the claimant for the payment of the arrearage amounts; and

(2) the obligor may contest the levy by filing suit under Section 157.323 not later than the 10th day after the date of receipt of the notice.

(c) If the claimant is the Title IV-D agency, the obligor receiving a notice of levy may request review by the agency not later than the 10th day after the date of receipt of the notice to resolve any issue in dispute regarding the existence or amount of the arrearages. The agency shall provide an opportunity for a review, by telephone conference or in person, as appropriate to the circumstances, not later than the fifth business day after the date an oral or written request from the obligor for the review is received. If the review fails to resolve any issue in dispute, the obligor may file suit under Section 157.323 for a hearing by the court not later than the fifth day after the date of the conclusion of the agency review. If the obligor fails to timely file suit, the Title IV-D agency may request the financial institution to release and remit the funds subject to levy.

(d) The notice under this section may be delivered to the last known address of the obligor by first class mail, certified mail, or registered mail.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 34, eff. Sept. 1, 2001.

Sec. 157.329. NO LIABILITY FOR COMPLIANCE WITH NOTICE OF LEVY

A financial institution that possesses or has a right to an obligor's assets for which a notice of levy has been delivered and that surrenders the assets or right to assets to a child support lien claimant is not liable to the obligor or any other person for the property or rights surrendered.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 34, eff. Sept. 1, 2001.

Sec. 157.330. FAILURE TO COMPLY WITH NOTICE OF LEVY

(a) A person who possesses or has a right to property that is the subject of a notice of levy delivered to the person and who refuses to surrender the property or right to property to the claimant on demand is liable to the claimant in an amount equal to the value of the property or right to property not surrendered but that does not exceed the amount of the child support arrearages for which the notice of levy has been filed.

(b) A claimant may recover costs and reasonable attorney's fees incurred in an action under this section.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 34, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 32, eff. September 1, 2007.

Sec. 157.331. ADDITIONAL LEVY TO SATISFY ARREARAGES

If the property or right to property on which a notice of levy has been filed does not produce money sufficient to satisfy the amount of child support arrearages identified in the notice of levy, the claimant may proceed to levy on other property of the obligor until the total amount of child support due is paid.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 34, eff. Sept. 1, 2001.

SUBCHAPTER H. HABEAS CORPUS

Sec. 157.371. JURISDICTION

(a) The relator may file a petition for a writ of habeas corpus in either the court of continuing, exclusive jurisdiction or in a court with jurisdiction to issue a writ of habeas corpus in the county in which the child is found.

(b) Although a habeas corpus proceeding is not a suit affecting the parent-child relationship, the court may refer to the provisions of this title for definitions and procedures as appropriate.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.372. RETURN OF CHILD

(a) Subject to Chapter 152 and the Parental Kidnapping Prevention Act (28 U.S.C. Section 1738A), if the right to possession of a child is governed by a court order, the court in a habeas corpus proceeding involving the right to possession of the child shall compel return of the child to the relator only if the court finds that the relator is entitled to possession under the order.

(b) If the court finds that the previous order was granted by a court that did not give the contestants reasonable notice of the proceeding and an opportunity to be heard, the court may not render an order in the habeas corpus proceeding compelling return of the child on the basis of that order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Greene v. Schuble, 654 S.W.2d 436, 438 (Tex. 1983, orig. proceeding). "[I]n the event of the death of the managing conservator, the surviving parent has a right to possession of the children, and a court may enforce this right by issuance of a writ of habeas corpus." Accordingly, the issuance of a writ of habeas corpus is a matter of right and should be automatic, immediate, and ministerial.

Schoenfeld v. Onion, 647 S.W.2d 954, 955 (Tex. 1983, orig. proceeding) (per curiam). "[T]he grant of the writ of habeas corpus should be automatic, immediate, and ministerial, based upon proof of the bare legal right to possession. A temporary order denying the writ 'in the best interest of the child' may not be used as a device to avoid the mandate" of this section.

Lamphere v. Chrisman, 554 S.W.2d 935, 938 (Tex. 1977, orig. proceeding). "The right to possession may not be relitigated in the habeas corpus hearing; the relator is entitled to an issuance of the writ immediately on a showing of his or her right to custody."

Sec. 157.373. RELATOR RELINQUISHED POSSESSION; TEMPORARY ORDERS

(a) If the relator has by consent or acquiescence relinquished actual possession and control of the child for not less than 6 months preceding the date of the filing of the petition for the writ, the court may either compel or refuse to order return of the child.

(b) The court may disregard brief periods of possession and control by the relator during the 6-month period.

(c) In a suit in which the court does not compel return of the child, the court may issue temporary orders under Chapter 105 if a suit affecting the parent-child relationship is pending and the parties have received notice of a hearing on temporary orders set for the same time as the habeas corpus proceeding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.374. WELFARE OF CHILD

Notwithstanding any other provision of this subchapter, the court may render an appropriate temporary order if there is a serious immediate question concerning the welfare of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Forbes v. Wettman, 598 S.W.2d 231, 232 (Tex. 1980, orig. proceeding). A "serious immediate question concerning the welfare of the child" means imminent danger of physical or emotional harm that requires immediate action to protect the child.

Sec. 157.375. IMMUNITY TO CIVIL PROCESS

(a) While in this state for the sole purpose of compelling the return of a child through a habeas corpus proceeding, the relator is not amenable to civil process and is not subject to the jurisdiction of any civil court except the court in which the writ is pending. The relator is subject to process and jurisdiction in that court only for the purpose of prosecuting the writ.

(b) A request by the relator for costs, attorney's fees, and necessary travel and other expenses under Chapter 106 or 152 is not a waiver of immunity to civil process.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.376. NO EXISTING ORDER

(a) If the right to possession of a child is not governed by an order, the court in a habeas corpus proceeding involving the right of possession of the child:

(1) shall compel return of the child to the parent if the right of possession is between a parent and a nonparent and a suit affecting the parent-child relationship has not been filed; or

(2) may either compel return of the child or issue temporary orders under Chapter 105 if a suit affecting the parent-child relationship is pending and the parties have received notice of a hearing on temporary orders set for the same time as the habeas corpus proceeding.

(b) The court may not use a habeas corpus proceeding to adjudicate the right of possession of a child between two parents or between two or more nonparents.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Trevino v. Garcia, 627 S.W.2d 147, 149 (Tex. 1982, orig. proceeding). This section imposes a mandatory duty upon the trial court to deny a writ of habeas corpus if the child is in the possession of its natural parents and the right to possession is not governed by a court order.

SUBCHAPTER I. CLARIFICATION OF ORDERS

Sec. 157.421. CLARIFYING NONSPECIFIC ORDER

(a) A court may clarify an order rendered by the court in a proceeding under this title if the court finds, on the motion of a party or on the court's own motion, that the order is not specific enough to be enforced by contempt.

(b) The court shall clarify the order by rendering an order that is specific enough to be enforced by contempt.

(c) A clarified order does not affect the finality of the order that it clarifies.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re R.F.G., 282 S.W.3d 722, 724 (Tex. App.—Dallas 2009, no pet.). The only basis for clarifying a prior divorce decree is that a provision is ambiguous.

In re A.C.B., 103 S.W.3d 570, 577 (Tex. App.—San Antonio 2003, no pet.). The only basis for clarifying a prior order in a SAPCR is that the provision is ambiguous and nonspecific. A court may not change any substantive provisions of the prior order.

Sec. 157.422. PROCEDURE

(a) The procedure for filing a motion for enforcement of a final order applies to a motion for clarification.

(b) A person is not entitled to a jury in a proceeding under this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.423. SUBSTANTIVE CHANGE NOT ENFORCEABLE

(a) A court may not change the substantive provisions of an order to be clarified under this subchapter.

(b) A substantive change made by a clarification order is not enforceable.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re V.M.P., 185 S.W.3d 531 (Tex. App.—Texarkana 2006, no pet.). A clerical error is one that is not the result of judicial reasoning, evidence, or determination. The correction of a clerical error does not effect a substantive change in a court's order. However, a judicial error results from judicial reasoning or determination, and a substantive change results from correction of a judicial error.

Sec. 157.424. RELATION TO MOTION FOR CONTEMPT

The court may render a clarification order before a motion for contempt is made or heard, in conjunction with a motion for contempt, or after the denial of a motion for contempt.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.425. ORDER NOT RETROACTIVE

The court may not provide that a clarification order is retroactive for the purpose of enforcement by contempt.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 157.426. TIME ALLOWED TO COMPLY

(a) In a clarification order, the court shall provide a reasonable time for compliance.

(b) The clarification order may be enforced by contempt after the time for compliance has expired.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. INCOME WITHHOLDING REQUIRED; GENERAL PROVISIONS

Sec. 158.001. INCOME WITHHOLDING; GENERAL RULE

In a proceeding in which periodic payments of child support are ordered, modified, or enforced, the court or the Title IV-D agency shall order that income be withheld from the disposable earnings of the obligor as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 34, eff. Sept. 1, 1997.

Sec. 158.002. SUSPENSION OF INCOME WITHHOLDING

Except in a Title IV-D case, the court may provide, for good cause shown or on agreement of the parties, that the order withholding income need not be issued or delivered to an employer until:

(1) the obligor has been in arrears for an amount due for more than 30 days;

(2) the amount of the arrearages is an amount equal to or greater than the amount due for a one-month period; or

(3) any other violation of the child support order has occurred.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 35, eff. Sept. 1, 1997.

Sec. 158.003. WITHHOLDING FOR ARREARAGES IN ADDITION TO CURRENT SUPPORT

(a) In addition to income withheld for the current support of a child, income shall be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any child support arrearages, including accrued interest as provided in Chapter 157.

(b) The additional amount to be withheld for arrearages shall be an amount sufficient to discharge those arrearages in not more than two years or an additional 20 percent added to the amount of the current monthly support order, whichever amount will result in the arrearages being discharged in the least amount of time.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 21, eff. Sept. 1, 1999.

Sec. 158.004. WITHHOLDING FOR ARREARAGES WHEN NO CURRENT SUPPORT IS DUE

If current support is no longer owed, the court or the Title IV-D agency shall order that income be withheld for arrearages, including accrued interest as provided in Chapter 157, in an amount sufficient to discharge those arrearages in not more than two years.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 22, eff. Sept. 1, 1999.

Sec. 158.005. WITHHOLDING TO SATISFY JUDGMENT FOR ARREARAGES

In rendering a cumulative judgment for arrearages, the court shall order that a reasonable amount of income be withheld from the disposable earnings of the obligor to be applied toward the satisfaction of the judgment.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 158.0051. ORDER FOR WITHHOLDING FOR COSTS AND FEES

(a) In addition to an order for income to be withheld for child support, including child support and child support arrearages, the court may render an order that income be withheld from the disposable earnings of the obligor to be applied towards the satisfaction of any ordered attorney's fees and costs resulting from an action to enforce child support under this title.

(b) An order rendered under this section is subordinate to an order or writ of withholding for child support under this chapter and is subject to the maximum amount allowed to be withheld under Section 158.009.

(c) The court shall order that amounts withheld for fees and costs under this section be remitted directly to the person entitled to the ordered attorney's fees or costs or be paid through a local registry for disbursement to that person.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 35, eff. Sept. 1, 2001.

ANNOTATIONS

In re R.H.W. III, 542 S.W.3d 724 (Tex. App.—Houston [14th Dist.] 2018, no pet.). A wage withholding order to satisfy an award of attorney's fees and costs is authorized only in child support enforcement actions. Though an amicus attorney's fees may be characterized as "necessaries," the trial court's characterization of the fees as "additional child support" was not expressly authorized by statute, and the court further erred by providing for enforcement of the amicus attorney's fees by a wage withholding order.

Sec. 158.006. INCOME WITHHOLDING IN TITLE IV-D SUITS

In a Title IV-D case, the court or the Title IV-D agency shall order that income be withheld from the disposable earnings of the obligor and may not suspend, stay, or delay issuance of the order or of a judicial or administrative writ of withholding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 36, eff. Sept. 1, 1997.

Sec. 158.007. EXTENSION OF REPAYMENT SCHEDULE BY COURT OR TITLE IV-D AGENCY; UNREASONABLE HARDSHIP

If the court or the Title IV-D agency finds that the schedule for discharging arrearages would cause the obligor, the obligor's family, or children for whom support is due from the obligor to suffer unreasonable hardship, the court or agency may extend the payment period for a reasonable length of time.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 22, eff. Sept. 1, 1999.

Sec. 158.008. PRIORITY OF WITHHOLDING

An order or writ of withholding has priority over any garnishment, attachment, execution, or other assignment or order affecting disposable earnings.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re D.C., 180 S.W.3d 647, 653 (Tex. App.—Waco 2005, no pet.). The consequences of future financial difficulties are not an adequate factual basis to support a finding that paying arrearages off in two years will result in an "unreasonable hardship."

Sec. 158.009. MAXIMUM AMOUNT WITHHELD FROM EARNINGS

An order or writ of withholding shall direct that any employer of the obligor withhold from the obligor's disposable earnings the amount specified up to a maximum amount of 50 percent of the obligor's disposable earnings.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 37, eff. Sept. 1, 1997.

ANNOTATIONS

In re T.J.S., No. 05-15-01456-CV, 2017 WL 1536497 (Tex. App.—Dallas Apr. 26, 2017, no pet.) (mem. op.). The trial court's modification order was reversed because the arrears payment combined with the current child support obligation exceeded 50 percent of the obligor's disposable earnings.

In re R.J.P., No. 04-15-00619-CV, 2016 WL 7480503 (Tex. App.—San Antonio Dec. 30, 2016, no pet.) (mem. op.). Evidence was sufficient to support a reduction in father's monthly arrears payment because the father presented evidence that the current arrears payment exceeded 50 percent of his disposable earnings.

Sec. 158.010. ORDER OR WRIT BINDING ON EMPLOYER DOING BUSINESS IN STATE

An order or writ of withholding issued under this chapter and delivered to an employer doing business in this state is binding on the employer without regard to whether the obligor resides or works outside this state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 38, eff. Sept. 1, 1997.

Sec. 158.011. VOLUNTARY WITHHOLDING BY OBLIGOR

(a) An obligor may file with the clerk of the court a notarized or acknowledged request signed by the obligor and the obligee for the issuance and delivery to the obligor's employer of a writ of withholding. A notarized or acknowledged request may be filed under this section regardless of whether a writ or order has been served on any party or of the existence or amount of an arrearage.

(b) On receipt of a request under this section, the clerk shall issue and deliver a writ of withholding in the manner provided by this chapter.

(c) An employer that receives a writ of withholding issued under this section may request a hearing in the same manner and according to the same terms provided by Section 158.205.

(d) An obligor whose employer receives a writ of withholding issued under this section may request a hearing in the manner provided by Section 158.309.

(e) An obligee may contest a writ of withholding issued under this section by requesting, not later than the 180th day after the date on which the obligee discovers that the writ has been issued, a hearing in the manner provided by Section 158.309.

(f) A writ of withholding under this section may not reduce the total amount of child support, including arrearages, owed by the obligor.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 55, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 39, eff. Sept. 1, 1997.

SUBCHAPTER B. PROCEDURE

Sec. 158.101. APPLICABILITY OF PROCEDURE

Except as otherwise provided in this chapter, the procedure for a motion for enforcement of child support as provided in Chapter 157 applies to an action for income withholding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 158.102. TIME LIMITATIONS

An order or writ for income withholding under this chapter may be issued until all current support and child support arrearages, interest, and any applicable fees and costs, including ordered attorney's fees and court costs, have been paid.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 40, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 23, eff. Sept. 1, 1999.

ANNOTATIONS

In re A.D., 73 S.W.3d 244, 245–46 (Tex. 2002). The 1997 amendments to the Family Code removed the four-year limitation on the court's jurisdiction to order withholding. They also authorized the attorney general to issue writs of withholding administratively at any time until all current support and child support arrearages have been paid.

In re R.R., No. 02-15-00032-CV, 2017 WL 632897 (Tex. App.—Fort Worth Feb. 16, 2017, pet. filed) (mem. op.). In this UIFSA case, because Texas law did not have a time limitation for obtaining a judicial writ of income withholding, the registration of a Florida order was not barred.

Sec. 158.103. CONTENTS OF ORDER OR WRIT OF WITHHOLDING

An order of withholding or writ of withholding issued under this chapter must contain the information required by the forms prescribed by the Title IV-D agency under Section 158.106.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 41, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 36, eff. Sept. 1, 2001.

Sec. 158.104. REQUEST FOR ISSUANCE OF ORDER OR JUDICIAL WRIT OF WITHHOLDING

A request for issuance of an order or judicial writ of withholding may be filed with the clerk of the court by the prosecuting attorney, the Title IV-D agency, the friend of the court, a domestic relations office, the obligor, the obligee, or an attorney representing the obligee or obligor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 23, eff. Sept. 1, 1999.

Sec. 158.105. ISSUANCE AND DELIVERY OF ORDER OR JUDICIAL WRIT OF WITHHOLDING

(a) On filing a request for issuance of an order or judicial writ of withholding, the clerk of the court shall cause a certified copy of the order or writ to be delivered to the obligor's current employer or to any subsequent employer of the obligor.

(b) The clerk shall issue and deliver the certified copy of the order or judicial writ not later than the fourth working day after the date the order is signed or the request is filed, whichever is later.

(c) An order or judicial writ of withholding shall be delivered to the employer by first class mail or, if requested, by certified or registered mail, return receipt requested, by electronic transmission, including electronic mail or facsimile transmission, or by service of citation to:

(1) the person authorized to receive service of process for the employer in civil cases generally; or

(2) a person designated by the employer, by written notice to the clerk, to receive orders or writs of withholding.

(d) The clerk may deliver an order or judicial writ of withholding under Subsection (c) by electronic mail if the employer has an electronic mail address or by facsimile transmission if the employer is capable of receiving documents transmitted in that manner. If delivery is accomplished by electronic mail, the clerk must request acknowledgment of receipt from the employer or use an electronic mail system with a read receipt capability. If delivery is accomplished by facsimile transmission, the clerk's facsimile machine must create a delivery confirmation report.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 37, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 1113 (H.B. 2408), Sec. 1, eff. September 1, 2005.

Sec. 158.106. REQUIRED FORMS FOR INCOME WITHHOLDING

(a) The Title IV-D agency shall prescribe forms as required by federal law in a standard format entitled order or notice to withhold income for child support under this chapter.

(b) The Title IV-D agency shall make the required forms available to obligors, obligees, domestic relations offices, friends of the court, clerks of the court, and private attorneys.

(c) The Title IV-D agency may prescribe additional forms for the efficient collection of child support from earnings and to promote the administration of justice for all parties.

(d) The forms prescribed by the Title IV-D agency under this section shall be used:

(1) for an order or judicial writ of income withholding under this chapter; and

(2) to request voluntary withholding under Section 158.011.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 42, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 25, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 38, eff. Sept. 1, 2001. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 6, eff. September 1, 2013.

SUBCHAPTER C. RIGHTS AND DUTIES OF EMPLOYER

Sec. 158.201. ORDER OR WRIT BINDING ON EMPLOYER

(a) An employer required to withhold income from earnings is not entitled to notice of the proceedings before the order is rendered or writ of withholding is issued.

(b) An order or writ of withholding is binding on an employer regardless of whether the employer is specifically named in the order or writ.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 43, eff. Sept. 1, 1997.

Sec. 158.202. EFFECTIVE DATE OF AND DURATION OF WITHHOLDING

An employer shall begin to withhold income in accordance with an order or writ of withholding not later than the first pay period following the date on which the order or writ was delivered to the employer and shall continue to withhold income as required by the order or writ as long as the obligor is employed by the employer.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 44, eff. Sept. 1, 1997.

Sec. 158.203. REMITTING WITHHELD PAYMENTS

(a) The employer shall remit the amount to be withheld to the person or office named in the order or writ on each pay date. The payment must include the date on which the withholding occurred.

(b) An employer with 50 or more employees shall remit a payment required under this section by electronic funds transfer or electronic data interchange not later than the second business day after the pay date.

(b–1) An employer with fewer than 50 employees may remit a payment required under this section by electronic funds transfer or electronic data interchange. A payment remitted by the employer electronically must be remitted not later than the date specified by Subsection (b).

(c) The employer shall include with each payment transmitted:

(1) the number assigned by the Title IV-D agency, if available, and the county identification number, if available;

(2) the name of the county or the county's federal information processing standard code;

(3) the cause number of the suit under which withholding is required;

(4) the payor's name and social security number; and

(5) the payee's name and, if available, social security number, unless the payment is transmitted by electronic funds transfer.

(d) In a case in which an obligor's income is subject to withholding, the employer shall remit the payment of child support directly to the state disbursement unit.

(e) The state disbursement unit may impose on an employer described by Subsection (b) a payment processing surcharge in an amount of not more than $25 for each remittance made on behalf of an employee that is not made by electronic funds transfer or electronic data exchange. The payment processing surcharge under this subsection may not be charged against the employee or taken from amounts withheld from the employee's wages.

(f) The state disbursement unit shall:

(1) notify an employer described by Subsection (b) who fails to remit withheld income by electronic funds transfer or electronic data exchange that the employer is subject to a payment processing surcharge under Subsection (e); and

(2) inform the employer of the amount of the surcharge owed and the manner in which the surcharge is required to be paid to the unit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 8, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 556, Sec. 26, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 19, eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 9, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 7, eff. September 1, 2013.

Sec. 158.204. EMPLOYER MAY DEDUCT FEE FROM EARNINGS

An employer may deduct an administrative fee of not more than $10 each month from the obligor's disposable earnings in addition to the amount to be withheld as child support.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 859, Sec. 1, eff. Sept. 1, 1999.

Sec. 158.205. HEARING REQUESTED BY EMPLOYER

(a) Not later than the 20th day after the date an order or writ of withholding is delivered, the employer may, as appropriate, file a motion with the court or file a request with the Title IV-D agency for a hearing on the applicability of the order or writ to the employer. The Title IV-D agency by rule shall establish procedures for an agency hearing under this section.

(b) The hearing under this section shall be held not later than the 15th day after the date the motion or request was made.

(c) An order or writ of withholding remains binding and payments shall continue to be made pending further order of the court or, in the case of an administrative writ, action of the Title IV-D agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 45, eff. Sept. 1, 1997.

Sec. 158.206. LIABILITY AND OBLIGATION OF EMPLOYER; WORKERS' COMPENSATION CLAIMS

(a) An employer receiving an order or a writ of withholding under this chapter, including an order or writ directing that health insurance or dental insurance be provided to a child, who complies with the order or writ is not liable to the obligor for the amount of income withheld and paid as required by the order or writ.

(b) An employer receiving an order or writ of withholding who does not comply with the order or writ is liable:

(1) to the obligee for the amount not paid in compliance with the order or writ, including the amount the obligor is required to pay for health insurance or dental insurance under Chapter 154;

(2) to the obligor for:

(A) the amount withheld and not paid as required by the order or writ; and

(B) an amount equal to the interest that accrues under Section 157.265 on the amount withheld and not paid; and

(3) for reasonable attorney's fees and court costs.

(c) If an obligor has filed a claim for workers' compensation, the obligor's employer shall send a copy of the income withholding order or writ to the insurance carrier with whom the claim has been filed in order to continue the ordered withholding of income.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 4.07, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 46, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 859, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1580, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 39, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 31, eff. September 1, 2018.

Sec. 158.207. EMPLOYER RECEIVING MORE THAN ONE ORDER OR WRIT

(a) An employer receiving two or more orders or writs for one obligor shall comply with each order or writ to the extent possible.

(b) If the total amount due under the orders or writs exceeds the maximum amount allowed to be withheld under Section 158.009, the employer shall pay an equal amount towards the current support in each order or writ until the employer has complied fully with each current support obligation and, thereafter, equal amounts on the arrearages until the employer has complied with each order or writ, or until the maximum total amount of allowed withholding is reached, whichever occurs first.

(c) An employer who receives more than one order or writ of withholding that combines withholding for child support and spousal maintenance as provided by Section 8.101 shall withhold income and pay the amount withheld in accordance with Section 8.207.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 47, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 807, Sec. 2, eff. Sept. 1, 2001.

Sec. 158.208. EMPLOYER MAY COMBINE AMOUNTS WITHHELD

An employer required to withhold from more than one obligor may combine the amounts withheld and make a single payment to each agency designated if the employer separately identifies the amount of the payment that is attributable to each obligor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 158.209. EMPLOYER'S PENALTY FOR DISCRIMINATORY HIRING OR DISCHARGE

(a) An employer may not use an order or writ of withholding as grounds in whole or part for the termination of employment or for any other disciplinary action against an employee.

(b) An employer may not refuse to hire an employee because of an order or writ of withholding.

(c) If an employer intentionally discharges an employee in violation of this section, the employer continues to be liable to the employee for current wages and other benefits and for reasonable attorney's fees and court costs incurred in enforcing the employee's rights as provided in this section.

(d) An action under this section may be brought by the employee, a friend of the court, the domestic relations office, or the Title IV-D agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 48, eff. Sept. 1, 1997.

Sec. 158.210. FINE FOR NONCOMPLIANCE

(a) In addition to the civil remedies provided by this subchapter or any other remedy provided by law, an employer who knowingly violates the provisions of this chapter may be subject to a fine not to exceed $200 for each occurrence in which the employer fails to:

(1) withhold income for child support as instructed in an order or writ issued under this chapter; or

(2) remit withheld income within the time required by Section 158.203 to the payee identified in the order or writ or to the state disbursement unit.

(b) A fine recovered under this section shall be paid to the county in which the obligee resides and shall be used by the county to improve child support services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 27, eff. Sept. 1, 1999.

Sec. 158.211. NOTICE OF TERMINATION OF EMPLOYMENT AND OF NEW EMPLOYMENT

(a) If an obligor terminates employment with an employer who has been withholding income, both the obligor and the employer shall notify the court or the Title IV-D agency and the obligee of that fact not later than the seventh day after the date employment terminated and shall provide the obligor's last known address and the name and address of the obligor's new employer, if known.

(b) The obligor has a continuing duty to inform any subsequent employer of the order or writ of withholding after obtaining employment.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 28, eff. Sept. 1, 1999.

Sec. 158.212. IMPROPER PAYMENT

An employer who remits a payment to an incorrect office or person shall remit the payment to the agency or person identified in the order of withholding not later than the second business day after the date the employer receives the returned payment.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 29, eff. Sept. 1, 1999.

Sec. 158.213. WITHHOLDING FROM WORKERS' COMPENSATION BENEFITS

(a) An insurance carrier that receives an order or writ of withholding under Section 158.206 for workers' compensation benefits payable to an obligor shall withhold an amount not to exceed the maximum amount allowed to be withheld from income under Section 158.009 regardless of whether the benefits payable to the obligor for lost income are paid as lump sum amounts or as periodic payments.

(b) An insurance carrier subject to this section shall send the amount withheld for child support to the place of payment designated in the order or writ of withholding.

Added by Acts 2003, 78th Leg., ch. 610, Sec. 9, eff. Sept. 1, 2003.

Sec. 158.214. WITHHOLDING FROM SEVERANCE PAY

(a) In this section, "severance pay" means income paid on termination of employment in addition to the employee's usual earnings from the employer at the time of termination.

(b) An employer receiving an order or writ of withholding under this chapter shall withhold from any severance pay owed an obligor an amount equal to the amount the employer would have withheld under the order or writ if the severance pay had been paid as the obligor's usual earnings as a current employee.

(c) The total amount that may be withheld under this section is subject to the maximum amount allowed to be withheld under Section 158.009.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 33, eff. September 1, 2007.

Sec. 158.215. WITHHOLDING FROM LUMP-SUM PAYMENTS

(a) In this section, "lump-sum payment" means income in the form of a bonus or an amount paid in lieu of vacation or other leave time. The term does not include an employee's usual earnings or an amount paid as severance pay on termination of employment.

(b) This section applies only to an employer who receives an administrative writ of withholding in a Title IV-D case.

(c) An employer to whom this section applies may not make a lump-sum payment to the obligor in the amount of $500 or more without first notifying the Title IV-D agency to determine whether all or a portion of the payment should be applied to child support arrearages owed by the obligor.

(d) After notifying the Title IV-D agency in compliance with Subsection (c), the employer may not make the lump-sum payment before the earlier of:

(1) the 10th day after the date on which the employer notified the Title IV-D agency; or

(2) the date on which the employer receives authorization from the Title IV-D agency to make the payment.

(e) If the employer receives a timely authorization from the Title IV-D agency under Subsection (d)(2), the employer may make the payment only in accordance with the terms of that authorization.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 34, eff. September 1, 2007. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 20, eff. June 19, 2009.

SUBCHAPTER D. JUDICIAL WRIT OF WITHHOLDING ISSUED BY CLERK

Sec. 158.301. NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING; FILING

(a) A notice of application for judicial writ of withholding may be filed if:

(1) a delinquency occurs in child support payments in an amount equal to or greater than the total support due for one month; or

(2) income withholding was not ordered at the time child support was ordered.

(b) The notice of application for judicial writ of withholding may be filed in the court of continuing jurisdiction by:

(1) the Title IV-D agency;

(2) the attorney representing the local domestic relations office;

(3) the attorney appointed a friend of the court as provided in Chapter 202;

(4) the obligor or obligee; or

(5) a private attorney representing the obligor or obligee.

(c) The Title IV-D agency may in a Title IV-D case file a notice of application for judicial writ of withholding on request of the obligor or obligee.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 57, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 50, eff. Sept. 1, 1997.

Sec. 158.302. CONTENTS OF NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING

The notice of application for judicial writ of withholding shall be verified and:

(1) state the amount of monthly support due, including medical support and dental support, the amount of arrearages or anticipated arrearages, including accrued interest, and the amount of wages that will be withheld in accordance with a judicial writ of withholding;

(2) state that the withholding applies to each current or subsequent employer or period of employment;

(3) state that if the obligor does not contest the withholding within 10 days after the date of receipt of the notice, the obligor's employer will be notified to begin the withholding;

(4) describe the procedures for contesting the issuance and delivery of a writ of withholding;

(5) state that if the obligor contests the withholding, the obligor will be afforded an opportunity for a hearing by the court not later than the 30th day after the date of receipt of the notice of contest;

(6) state that the sole ground for successfully contesting the issuance of a writ of withholding is a dispute concerning the identity of the obligor or the existence or amount of the arrearages, including accrued interest;

(7) describe the actions that may be taken if the obligor contests the notice of application for judicial writ of withholding, including the procedures for suspending issuance of a writ of withholding; and

(8) include with the notice a suggested form for the motion to stay issuance and delivery of the judicial writ of withholding that the obligor may file with the clerk of the appropriate court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 51, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 32, eff. September 1, 2018.

Sec. 158.303. INTERSTATE REQUEST FOR INCOME WITHHOLDING

(a) The registration of a foreign support order as provided in Chapter 159 is sufficient for the filing of a notice of application for judicial writ of withholding.

(b) The notice shall be filed with the clerk of the court having venue as provided in Chapter 159.

(c) Notice of application for judicial writ of withholding may be delivered to the obligor at the same time that an order is filed for registration under Chapter 159.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 58, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 52, eff. Sept. 1, 1997.

Sec. 158.304. ADDITIONAL ARREARAGES

If the notice of application for judicial writ of withholding states that the obligor has repeatedly failed to pay support in accordance with the underlying support order, the judicial writ may include arrearages that accrue between the filing of the notice and the date of the hearing or the issuance of a judicial writ of withholding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 53, eff. Sept. 1, 1997.

Sec. 158.306. DELIVERY OF NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING; TIME OF DELIVERY

(a) A notice of application for judicial writ of withholding may be delivered to the obligor by:

(1) hand delivery by a person designated by the Title IV-D agency or local domestic relations office;

(2) first-class or certified mail, return receipt requested, addressed to the obligor's last known address or place of employment; or

(3) by service of citation as in civil cases generally.

(b) If the notice is delivered by mailing or hand delivery, the party who filed the notice shall file with the court a certificate stating the name, address, and date on which the mailing or hand delivery was made.

(c) Notice is considered to have been received by the obligor:

(1) if hand delivered, on the date of delivery;

(2) if mailed by certified mail, on the date of receipt;

(3) if mailed by first-class mail, on the 10th day after the date the notice was mailed; or

(4) if delivered by service of citation, on the date of service.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 54, eff. Sept. 1, 1997.

ANNOTATIONS

Glass v. Williamson, 137 S.W.3d 114, 117 (Tex.,App.—Houston [1st Dist.] 2004, no pet.). Failure to adhere to the procedural requirements of sections 158.306 and 158.307 did not divest the trial court of subject matter jurisdiction but instead raised only the issue whether a party was entitled to the relief he sought.

Sec. 158.307. MOTION TO STAY ISSUANCE OF WRIT OF WITHHOLDING

(a) The obligor may stay issuance of a judicial writ of withholding by filing a motion to stay with the clerk of court not later than the 10th day after the date the notice of application for judicial writ of withholding was received.

(b) The grounds for filing a motion to stay issuance are limited to a dispute concerning the identity of the obligor or the existence or the amount of the arrearages.

(c) The obligor shall verify that statements of fact in the motion to stay issuance of the writ are true and correct.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 55, eff. Sept. 1, 1997.

ANNOTATIONS

Glass v. Williamson, 137 S.W.3d 114, 117 (Tex. App.—Houston [1st Dist.] 2004, no pet.). Failure to adhere to the procedural requirements of sections 158.306 and 158.307 did not divest the trial court of subject matter jurisdiction but instead raised only the issue whether a party was entitled to the relief he sought.

Sec. 158.308. EFFECT OF FILING MOTION TO STAY

The filing of a motion to stay by an obligor in the manner provided by Section 158.307 prohibits the clerk of court from delivering the judicial writ of withholding to any employer of the obligor before a hearing is held.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 56, eff. Sept. 1, 1997.

Sec. 158.309. HEARING ON MOTION TO STAY

(a) If a motion to stay is filed in the manner provided by Section 158.307, the court shall set a hearing on the motion and the clerk of court shall notify the obligor, obligee, or their authorized representatives, and the party who filed the application for judicial writ of withholding of the date, time, and place of the hearing.

(b) The court shall hold a hearing on the motion to stay not later than the 30th day after the date the motion was filed, except that a hearing may be held later than the 30th day after filing if both the obligor and obligee agree and waive the right to have the motion heard within 30 days.

(c) Upon hearing, the court shall:

(1) render an order for income withholding that includes a determination of the amount of child support arrearages, including medical support, dental support, and interest; or

(2) grant the motion to stay.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 59, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 57, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 33, eff. September 1, 2018.

ANNOTATIONS

In re R.G., 362 S.W.3d 118, 123 (Tex. App.—San Antonio 2011, pet. denied). As in Family Code chapter 157, under chapter 158, the trial court, not a party, has the burden to set a hearing on a motion to stay. Failure by the court to set the motion within the thirty-day window does not waive jurisdiction.

Sec. 158.310. SPECIAL EXCEPTIONS

(a) A defect in a notice of application for judicial writ of withholding is waived unless the respondent specially excepts in writing and cites with particularity the alleged defect, obscurity, or other ambiguity in the notice.

(b) A special exception under this section must be heard by the court before hearing the motion to stay issuance.

(c) If the court sustains an exception, the court shall provide the party filing the notice an opportunity to refile and the court shall continue the hearing to a date certain without the requirement of additional service.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 58, eff. Sept. 1, 1997.

Sec. 158.311. ARREARAGES

(a) Payment of arrearages after receipt of notice of application for judicial writ of withholding may not be the sole basis for the court to refuse to order withholding.

(b) The court shall order that a reasonable amount of income be withheld to be applied toward the liquidation of arrearages, even though a judgment confirming arrearages has been rendered against the obligor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 59, eff. Sept. 1, 1997.

Sec. 158.312. REQUEST FOR ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING

(a) If a notice of application for judicial writ of withholding is delivered and a motion to stay is not filed within the time limits provided by Section 158.307, the party who filed the notice shall file with the clerk of the court a request for issuance of the writ of withholding stating the amount of current support, including medical support and dental support, the amount of arrearages, and the amount to be withheld from the obligor's income.

(b) The request for issuance may not be filed before the 11th day after the date of receipt of the notice of application for judicial writ of withholding by the obligor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 60, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 30, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 34, eff. September 1, 2018.

Sec. 158.313. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING

(a) On the filing of a request for issuance of a writ of withholding, the clerk of the court shall issue the writ.

(b) The writ shall be delivered as provided by Subchapter B.

(c) The clerk shall issue and mail the writ not later than the second working day after the date the request is filed.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 158.314. CONTENTS OF WRIT OF WITHHOLDING

The judicial writ of income withholding issued by the clerk must direct that the employer or a subsequent employer withhold from the obligor's disposable income for current child support, including medical support and dental support, and child support arrearages an amount that is consistent with the provisions of this chapter regarding orders of withholding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 61, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 35, eff. September 1, 2018.

Sec. 158.315. EXTENSION OF REPAYMENT SCHEDULE BY PARTY; UNREASONABLE HARDSHIP

If the party who filed the notice of application for judicial writ of withholding finds that the schedule for repaying arrearages would cause the obligor, the obligor's family, or the children for whom the support is due from the obligor to suffer unreasonable hardship, the party may extend the payment period in the writ.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 62, eff. Sept. 1, 1997.

Sec. 158.316. PAYMENT OF AMOUNT TO BE WITHHELD

The amount to be withheld shall be paid to the person or office named in the writ on each pay date and shall include with the payment the date on which the withholding occurred.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 158.317. FAILURE TO RECEIVE NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING

(a) Not later than the 30th day after the date of the first pay period following the date of delivery of the writ of withholding to the obligor's employer, the obligor may file an affidavit with the court that a motion to stay was not timely filed because the notice of application for judicial writ of withholding was not received by the obligor and that grounds exist for a motion to stay.

(b) Concurrently with the filing of the affidavit, the obligor may file a motion to withdraw the writ of withholding and request a hearing on the applicability of the writ.

(c) Income withholding may not be interrupted until after the hearing at which the court renders an order denying or modifying withholding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 63, eff. Sept. 1, 1997.

Sec. 158.319. ISSUANCE AND DELIVERY OF JUDICIAL WRIT OF WITHHOLDING TO SUBSEQUENT EMPLOYER

(a) After the issuance of a judicial writ of withholding by the clerk, a party authorized to file a notice of application for judicial writ of withholding under this subchapter may issue the judicial writ of withholding to a subsequent employer of the obligor by delivering to the employer by certified mail a copy of the writ.

(b) The judicial writ of withholding must include the name, address, and signature of the party and clearly indicate that the writ is being issued to a subsequent employer.

(c) The party shall file a copy of the judicial writ of withholding with the clerk not later than the third working day following delivery of the writ to the subsequent employer. The party shall pay the clerk a fee of $15 at the time the copy of the writ is filed.

(d) The party shall file the postal return receipt from the delivery to the subsequent employer not later than the third working day after the party receives the receipt.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 60, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 64, eff. Sept. 1, 1997.

SUBCHAPTER E. MODIFICATION, REDUCTION, OR TERMINATION OF WITHHOLDING

Sec. 158.401. MODIFICATIONS TO OR TERMINATION OF WITHHOLDING BY TITLE IV-D AGENCY

(a) The Title IV-D agency shall establish procedures for the reduction in the amount of or termination of withholding from income on the liquidation of an arrearages or the termination of the obligation of support in Title IV-D cases. The procedures shall provide that the payment of overdue support may not be used as the sole basis for terminating withholding.

(b) At the request of the Title IV-D agency, the clerk of the court shall issue a judicial writ of withholding to the obligor's employer reflecting any modification or changes in the amount to be withheld or the termination of withholding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 65, eff. Sept. 1, 1997.

Sec. 158.402. AGREEMENT BY PARTIES REGARDING AMOUNT OR DURATION OF WITHHOLDING

(a) An obligor and obligee may agree on a reduction in or termination of income withholding for child support on the occurrence of one of the following contingencies stated in the order:

(1) the child becomes 18 years of age or is graduated from high school, whichever is later;

(2) the child's disabilities of minority are removed by marriage, court order, or other operation of law; or

(3) the child dies.

(b) The obligor and obligee may file a notarized or acknowledged request with the clerk of the court under Section 158.011 for a revised judicial writ of withholding, including the termination of withholding.

(c) The clerk shall issue and deliver to an employer of the obligor a judicial writ of withholding that reflects the agreed revision or termination of withholding.

(d) An agreement by the parties under this section does not modify the terms of a support order.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 61, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 66, eff. Sept. 1, 1997.

Sec. 158.403. MODIFICATIONS TO OR TERMINATION OF WITHHOLDING IN VOLUNTARY WITHHOLDING CASES

(a) If an obligor initiates voluntary withholding under Section 158.011, the obligee or an agency providing child support services may file with the clerk of the court a notarized request signed by the obligor and the obligee or agency, as appropriate, for the issuance and delivery to the obligor of a:

(1) modified writ of withholding that reduces the amount of withholding; or

(2) notice of termination of withholding.

(b) On receipt of a request under this section, the clerk shall issue and deliver a modified writ of withholding or notice of termination in the manner provided by Section 158.402.

(c) The clerk may charge a reasonable fee not to exceed $15 for filing the request.

(d) An obligee may contest a modified writ of withholding or notice of termination issued under this section by requesting a hearing in the manner provided by Section 158.309 not later than the 180th day after the date the obligee discovers that the writ or notice has been issued.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 61, eff. Sept. 1, 1995.

Sec. 158.404. DELIVERY OF ORDER OF REDUCTION OR TERMINATION OF WITHHOLDING

If a court has rendered an order that reduces the amount of child support to be withheld or terminates withholding for child support, any person or governmental entity may deliver to the employer a certified copy of the order without the requirement that the clerk of the court deliver the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Sec. 158.402 by Acts 1995, 74th Leg., ch. 751, Sec. 61, eff. Sept. 1, 1995.

Sec. 158.405. LIABILITY OF EMPLOYERS

The provisions of this chapter regarding the liability of employers for withholding apply to an order that reduces or terminates withholding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Sec. 158.403 by Acts 1995, 74th Leg., ch. 751, Sec. 61, eff. Sept. 1, 1995.

SUBCHAPTER F. ADMINISTRATIVE WRIT OF WITHHOLDING

Sec. 158.501. ISSUANCE OF ADMINISTRATIVE WRIT OF WITHHOLDING

(a) The Title IV-D agency may initiate income withholding by issuing an administrative writ of withholding for the enforcement of an existing order as authorized by this subchapter.

(b) Except as provided by Subsection (d), the Title IV-D agency is the only entity that may issue an administrative writ under this subchapter.

(c) The Title IV-D agency may use the procedures authorized by this subchapter to enforce a support order rendered by a tribunal of another state regardless of whether the order has been registered under Chapter 159.

(d) A domestic relations office may issue an administrative writ of withholding under this chapter in a proceeding in which the office is providing child support enforcement services. A reference in this code to the Title IV-D agency that relates to an administrative writ includes a domestic relations office, except that the writ must be in the form prescribed by the Title IV-D agency under Section 158.504.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 31, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 40, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 199 (H.B. 1182), Sec. 3, eff. September 1, 2005. Acts 2005, 79th Leg., Ch. 199 (H.B. 1182), Sec. 4, eff. September 1, 2005.

ANNOTATIONS

In re T.L., 316 S.W.3d 78, 87 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). When an order is registered in a foreign jurisdiction for enforcement purposes, a title IV-D agency may still issue an administrative writ of withholding provided that the Texas court maintains jurisdiction under UIFSA.

Attorney General v. Redding, 60 S.W.3d 891, 895 (Tex. App.—Dallas 2001, no pet.). The definition of "existing" order is not limited and includes any enforceable order for support, including a child support order in which arrearages remain due.

Sec. 158.502. When Administrative Writ of Withholding May Be Issued

(a) An administrative writ of withholding under this subchapter may be issued by the Title IV-D agency at any time until all current support, including medical support and dental support, child support arrearages, and Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible have been paid. The writ issued under this subsection may be based on an obligation in more than one support order.

(b) The Title IV-D agency may issue an administrative writ of withholding that directs that an amount be withheld for an arrearage or adjusts the amount to be withheld for an arrearage. An administrative writ issued under this subsection may be contested as provided by Section 158.506.

(c) The Title IV-D agency may issue an administrative writ of withholding as a reissuance of an existing withholding order on file with the court of continuing jurisdiction or a tribunal of another state. The administrative writ under this subsection is not subject to the contest provisions of Sections 158.505(a)(2) and 158.506.

(d) The Title IV-D agency may issue an administrative writ of withholding to direct child support payments to the state disbursement unit of another state.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 31, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 41, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1247, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 35, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 36, eff. September 1, 2018.

Sec. 158.503. Delivery of Administrative Writ to Employer; Filing with Court or Maintaining Record

(a) An administrative writ of withholding issued under this subchapter may be delivered to an employer by mail or by electronic transmission.

(b) The Title IV-D agency shall:

(1) not later than the third business day after the date of delivery of the administrative writ of withholding to an employer, file a copy of the writ, together with a signed certificate of service, in the court of continuing jurisdiction; or

(2) maintain a record of the writ until all support obligations of the obligor have been satisfied or income withholding has been terminated as provided by this chapter.

(b–1) The certificate of service required under Subsection (b)(1) may be signed electronically.

(c) The copy of the administrative writ of withholding filed with the clerk of court must include:

(1) the name, address, and signature of the authorized attorney or individual that issued the writ;

(2) the name and address of the employer served with the writ; and

(3) a true copy of the information provided to the employer.

(d) The clerk of the court may charge a reasonable fee not to exceed $15 for filing an administrative writ under this section.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 32, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 116, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1023, Sec. 42, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 10, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 11, eff. September 1, 2011.

Sec. 158.504. CONTENTS OF ADMINISTRATIVE WRIT OF WITHHOLDING

(a) The administrative writ of withholding must be in the form prescribed by the Title IV-D agency as required by this chapter and in a standard format authorized by the United States Department of Health and Human Services.

(b) An administrative writ of withholding issued under this subchapter may contain only the information that is necessary for the employer to withhold income for child support, medical support, and dental support and shall specify the place where the withheld income is to be paid.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 33, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 43, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 37, eff. September 1, 2018.

Sec. 158.505. NOTICE TO OBLIGOR

(a) On issuance of an administrative writ of withholding, the Title IV-D agency shall send the obligor:

(1) notice that the withholding has commenced, including, if the writ is issued as provided by Section 158.502(b), the amount of the arrearages, including accrued interest;

(2) except as provided by Section 158.502(c), notice of the procedures to follow if the obligor desires to contest withholding on the grounds that the identity of the obligor or the existence or amount of arrearages is incorrect; and

(3) a copy of the administrative writ, including the information concerning income withholding provided to the employer.

(b) The notice required under this section may be sent to the obligor by:

(1) personal delivery by a person designated by the Title IV-D agency;

(2) first-class mail or certified mail, return receipt requested, addressed to the obligor's last known address; or

(3) service of citation as in civil cases generally.

(c) Repealed by Acts 1999, 76th Leg., ch. 556, Sec. 81, eff. Sept. 1, 1999.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 34, 81, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 44, eff. Sept. 1, 2001.

Sec. 158.506. CONTEST BY OBLIGOR TO ADMINISTRATIVE WRIT OF WITHHOLDING

(a) Except as provided by Section 158.502(c), an obligor receiving the notice under Section 158.505 may request a review by the Title IV-D agency to resolve any issue in dispute regarding the identity of the obligor or the existence or amount of arrearages. The Title IV-D agency shall provide an opportunity for a review, by telephonic conference or in person, as may be appropriate under the circumstances.

(b) After a review under this section, the Title IV-D agency may issue a new administrative writ of withholding to the employer, including a writ modifying the amount to be withheld or terminating withholding.

(c) If a review under this section fails to resolve any issue in dispute, the obligor may file a motion with the court to withdraw the administrative writ of withholding and request a hearing with the court not later than the 30th day after receiving notice of the agency's determination. Income withholding may not be interrupted pending a hearing by the court.

(d) If an administrative writ of withholding issued under this subchapter is based on an order of a tribunal of another state that has not been registered under Chapter 159, the obligor may file a motion with an appropriate court in accordance with Subsection (c).

Added by Acts 1997, 75th Leg., ch. 911, Sec. 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 35, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 36, eff. September 1, 2007.

Sec. 158.507. ADMINISTRATIVE WRIT TERMINATING WITHHOLDING

An administrative writ to terminate withholding may be issued and delivered to an employer by the Title IV-D agency when all current support, including medical support and dental support, child support arrearages, and Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible have been paid.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 67, eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 37, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 38, eff. September 1, 2018.

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SUBCHAPTER A. CONFLICTS BETWEEN PROVISIONS

Sec. 159.001. CONFLICTS BETWEEN PROVISIONS

If a provision of this chapter conflicts with a provision of this title or another statute or rule of this state and the conflict cannot be reconciled, this chapter prevails.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 159.101. SHORT TITLE

This chapter may be cited as the Uniform Interstate Family Support Act.

Added by Acts 2003, 78th Leg., ch. 1247, Sec. 3, eff. Sept. 1, 2003.

Sec. 159.102. DEFINITIONS

In this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who:

(A) is or is alleged to be owed a duty of support by the individual's parent; or

(B) is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(3) "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

(4) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) which has been declared under the law of the United States to be a foreign reciprocating country;

(B) which has established a reciprocal arrangement for child support with this state as provided in Section 159.308;

(C) which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this chapter; or

(D) in which the Convention is in force with respect to the United States.

(6) "Foreign support order" means a support order of a foreign tribunal.

(7) "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(8) "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or a comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(9) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(10) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Chapter 158, to withhold support from the income of the obligor.

(11) "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or a petition or comparable pleading is filed for forwarding to another state or foreign country.

(12) "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(13) "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

(14) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(16) "Obligee" means:

(A) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(B) a foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee in place of child support;

(C) an individual seeking a judgment determining parentage of the individual's child; or

(D) a person that is a creditor in a proceeding under Subchapter H.

(17) "Obligor" means an individual, or the estate of a decedent, that:

(A) owes or is alleged to owe a duty of support;

(B) is alleged but has not been adjudicated to be a parent of a child;

(C) is liable under a support order; or

(D) is a debtor in a proceeding under Subchapter H.

(18) "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Record" means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium; and

(B) retrievable in a perceivable form.

(21) "Register" means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country.

(22) "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

(23) "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

(24) "Responding tribunal" means the authorized tribunal in a responding state or foreign country.

(25) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(26) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) "Support enforcement agency" means a public official, governmental entity, or private agency authorized to:

(A) seek enforcement of support orders or laws relating to the duty of support;

(B) seek establishment or modification of child support;

(C) request determination of parentage of a child;

(D) attempt to locate obligors or their assets; or

(E) request determination of the controlling child support order.

"Support enforcement agency" does not include a domestic relations office unless that office has entered into a cooperative agreement with the Title IV-D agency to perform duties under this chapter.

(28) "Support order" means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse that provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees, and other relief.

(29) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1997. Renumbered from Family Code Sec. 159.101 and amended by Acts 2003, 78th Leg., ch. 1247, Sec. 3, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 38, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 1, eff. July 1, 2015.

ANNOTATIONS

O'Donnell v. Abbott, 393 F. Supp. 2d 508, 516 (W.D. Tex. 2005), *aff'd mem.*, 481 F.3d 280 (5th Cir. 2007) (per curiam). A business that collects and disburses child support payments for client-beneficiaries of child support orders is not an "obligee" under UIFSA and has no right to obtain child support proceeds from the Attorney General's State Disbursement Unit pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

In re V.L.C., 225 S.W.3d 221, 227 (Tex. App.—El Paso 2006, no pet.). When a divorce order is signed in Mexico, the terms of the decree are not governed by UIFSA because the Republic of Mexico is not a "state" under this section.

Sec. 159.103. STATE TRIBUNAL AND SUPPORT ENFORCEMENT AGENCY

(a) The court is the tribunal of this state.

(b) The office of the attorney general is the support enforcement agency of this state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 2, eff. Sept. 1, 1997. Renumbered from Family Code Sec. 159.102 by Acts 2003, 78th Leg., ch. 1247, Sec. 3, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 2, eff. July 1, 2015.

Sec. 159.104. REMEDIES CUMULATIVE

(a) Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

(b) This chapter does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 159.103 and amended by Acts 2003, 78th Leg., ch. 1247, Sec. 3, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 3, eff. July 1, 2015.

ANNOTATIONS

State v. Borchers, 805 S.W.2d 880, 882 (Tex. App.—San Antonio 1991, writ denied). Modification of a child support order is not permitted under the Uniform Reciprocal Enforcement of Support Act, the precursor to UIFSA, as the statute provided additional cumulative remedies.

Sec. 159.105. APPLICATION OF CHAPTER TO RESIDENT OF FOREIGN COUNTRY AND FOREIGN SUPPORT PROCEEDING

(a) A tribunal of this state shall apply Subchapters B through G and, as applicable, Subchapter H to a support proceeding involving:

(1) a foreign support order;

(2) a foreign tribunal; or

(3) an obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Subchapters B through G.

(c) Subchapter H applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Subchapter H is inconsistent with Subchapters B through G, Subchapter H controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 4, eff. July 1, 2015.

SUBCHAPTER C. JURISDICTION

Sec. 159.201. BASES FOR JURISDICTION OVER NONRESIDENT

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with citation in this state;

(2) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage of a child in the paternity registry maintained in this state by the vital statistics unit; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction listed in Subsection (a) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of Section 159.611 are met, or, in the case of a foreign support order, unless the requirements of Section 159.615 are met.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 5, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 4, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.054, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 5, eff. July 1, 2015.

ANNOTATIONS

In re G.L.A., 195 S.W.3d 787 (Tex. App.—Beaumont 2006, pet. denied). When a parent filed a motion to dismiss without first filing a special appearance, he entered a general appearance and became subject to personal jurisdiction in Texas. No basis for dismissal was supported under the doctrine of forum non conveniens. Further, when a party requests enforcement of a facially valid child support order from another state, trial courts must enforce the order as required by the Full Faith and Credit Clause of the U.S. Constitution.

Attorney General ex rel. South Carolina v. Besaw, 877 S.W.2d 32, 34 (Tex. App.—Beaumont 1994, no writ). A post-decree appearance in a trial court confers personal jurisdiction over a parent obligated to pay child support, even if the court would have lacked personal jurisdiction in the original divorce proceeding (discussing the Uniform Reciprocal Enforcement of Support Act, the precursor to UIFSA).

Sec. 159.202. DURATION OF PERSONAL JURISDICTION

Personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as the tribunal of this state has continuing,

exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 159.205, 159.206, and 159.211.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 5, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 6, eff. July 1, 2015.

Sec. 159.203. INITIATING AND RESPONDING TRIBUNAL OF STATE

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or a foreign country.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 3, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 7, eff. July 1, 2015.

Sec. 159.204. SIMULTANEOUS PROCEEDINGS

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) the petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) the contesting party timely challenges the exercise of jurisdiction in this state; and

(3) if relevant, the other state or foreign country is the home state of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 6, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 8, eff. July 1, 2015.

Sec. 159.205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD SUPPORT ORDER

(a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) the tribunal's order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that Act that modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) Repealed by Acts 2003, 78th Leg., ch. 1247, Sec. 46.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 7, 8, 46, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 9, eff. July 1, 2015.

ANNOTATIONS

In re Meekins, 550 S.W.3d 729, 747 (Tex. App.—Houston [1st Dist.] 2018, orig. proceeding). UIFSA, unlike the UCCJEA, provides no mechanism for the issuing tribunal of a support order to decline to exercise its continuing, exclusive jurisdiction and transfer jurisdiction to modify that support order to a court in another state.

In re Sanders, No. 05-16-00617-CV, 2016 WL 3947093 (Tex. App.—Dallas July 18, 2016, orig. proceeding) (mem. op.). Once a trial court with jurisdiction renders a support decree, that court is the only court authorized to modify the decree as long as it retains jurisdiction. Even though a Colorado order did not provide for monthly child support, the order did require the parties to split all expenses of the child equally and, therefore, constituted a support order.

Grimes v. McFarland, No. 14-02-00875-CV, 2003 WL 21787030 (Tex. App.—Houston [14th Dist.] Aug. 5, 2003, no pet.) (mem. op.). The residency of an incarcerated parent is not determined by the location of incarceration.

In re B.O.G., 48 S.W.3d 312 (Tex. App.—Waco 2001, pet. denied). If both parents and their child move from Texas, then Texas courts are divested of jurisdiction to hear motions to modify child support six months after the final move from the state.

Thompson v. Thompson, 893 S.W.2d 301 (Tex. App.—Houston [1st Dist.] 1995, no writ). If a state has adopted laws that are substantially similar to UIFSA, then no Texas court may modify a child support order from that state. A Texas court has authority only to register and enforce the existing order.

In re Miller, 583 S.W.2d 872 (Tex. Civ. App.—Dallas 1979, orig. proceeding). Once one Texas court obtained jurisdiction pursuant to the Uniform Reciprocal Enforcement of Support Act, the precursor to UIFSA, a subsequent Texas court's contempt order was void as long as jurisdiction in the first court continued.

Sec. 159.206. CONTINUING JURISDICTION TO ENFORCE CHILD SUPPORT ORDER

(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) the order, if the order:

(A) is the controlling order; and

(B) has not been modified by a tribunal of another state that assumed jurisdiction under the Uniform Interstate Family Support Act; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 9, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 10, eff. July 1, 2015.

ANNOTATIONS

State v. Borchers, 805 S.W.2d 880, 882 (Tex. App.—San Antonio 1991, writ denied). Court approval is required to modify child support orders. Private agreements among parents to modify support are violative of public policy absent court approval (applying the Uniform Reciprocal Enforcement of Support Act, the precursor to UIFSA).

Sec. 159.207. DETERMINATION OF CONTROLLING CHILD SUPPORT ORDER

(a) If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under this chapter and two or more child support orders have been issued by tribunals of this state, another state, or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) if only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls;

(2) if more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter:

(A) an order issued by a tribunal in the current home state of the child controls; or

(B) if an order has not been issued in the current home state of the child, the order most recently issued controls; and

(3) if none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state shall issue a child support order that controls.

(c) If two or more child support orders have been issued for the same obligor and same child, on request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under Subsection (b). The request may be filed with a registration for enforcement or registration for modification under Subchapter G or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under Subsection (a), (b), or (c) has continuing jurisdiction to the extent provided by Section 159.205 or 159.206.

(f) A tribunal of this state that determines by order which is the controlling order under Subsection (b)(1) or (2) or Subsection (c), or that issues a new controlling order under Subsection (b)(3), shall state in that order:

(1) the basis upon which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 159.209.

(g) Within 30 days after issuance of an order determining which order is the controlling order, the party obtaining the order shall file a certified copy of the controlling order in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made under this section, must be recognized in proceedings under this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 5, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 10, 11, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 11, eff. July 1, 2015.

ANNOTATIONS

Attorney General ex rel. South Carolina v. Besaw, 877 S.W.2d 32, 34 (Tex. App.—Beaumont 1994, no writ). A post-decree appearance in a trial court confers personal jurisdiction over a parent obligated to pay child support, even if the court would have lacked personal jurisdiction in the original divorce proceeding (discussing the Uniform Reciprocal Enforcement of Support Act, the precursor to UIFSA).

Sec. 159.208. CHILD SUPPORT ORDERS FOR TWO OR MORE OBLIGEES

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 12, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 12, eff. July 1, 2015.

Sec. 159.209. CREDIT FOR PAYMENTS

A tribunal of this state shall credit amounts collected for a particular period under any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this state, another state, or a foreign country.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 12, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 13, eff. July 1, 2015.

Sec. 159.210. APPLICATION OF CHAPTER TO NONRESIDENT SUBJECT TO PERSONAL JURISDICTION

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this chapter or under other law of this state relating to a support order or recognizing a foreign support order may receive evidence from outside this state as provided by Section 159.316, communicate with a tribunal outside this state as provided by Section 159.317, and obtain discovery through a tribunal outside this state as provided by Section 159.318. In all other respects, Subchapters D, E, F, and G do not apply and the tribunal shall apply the procedural and substantive law of this state.

Added by Acts 2003, 78th Leg., ch. 1247, Sec. 12, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 14, eff. July 1, 2015.

Sec. 159.211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL SUPPORT ORDER

(a) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) an initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) a responding tribunal to enforce or modify its own spousal support order.

Added by Acts 2003, 78th Leg., ch. 1247, Sec. 12, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 15, eff. July 1, 2015.

ANNOTATIONS

Owens v. Owens, 228 S.W.3d 721 (Tex. App.—Houston [14th Dist.] 2006, pet. dism'd). This section is not retroactive. The prohibition against modification of a spousal support order is inapplicable to proceedings that were commenced before the effective date of the section.

SUBCHAPTER D. CIVIL PROVISIONS OF GENERAL APPLICATION

Sec. 159.301. PROCEEDINGS UNDER CHAPTER

(a) Except as otherwise provided in this chapter, this subchapter applies to all proceedings under this chapter.

(b) Repealed by Acts 2003, 78th Leg., ch. 1247, Sec. 46.

(c) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or foreign country that has or can obtain personal jurisdiction over the respondent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 6, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 13, 46, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 16, eff. July 1, 2015.

Sec. 159.302. PROCEEDING BY MINOR PARENT

A minor parent or a guardian or other legal representative of a minor parent may maintain a proceeding on behalf of or for the benefit of the minor's child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 14, eff. Sept. 1, 2003.

Sec. 159.303. APPLICATION OF LAW OF STATE

Except as otherwise provided in this chapter, a responding tribunal of this state shall:

(1) apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 7, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 15, eff. Sept. 1, 2003.

Sec. 159.304. DUTIES OF INITIATING TRIBUNAL

(a) On the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, on request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under the applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 8, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 15, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 17, eff. July 1, 2015.

Sec. 159.305. DUTIES AND POWERS OF RESPONDING TRIBUNAL

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly under Section 159.301(c), the responding tribunal shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a bench warrant or capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant or capias in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this chapter on compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 16, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 18, eff. July 1, 2015.

ANNOTATIONS

Kendall v. Kendall, 340 S.W.3d 483 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Once the Texas trial court determined that father's obligation to provide funds for education of the child existed under a New York judgment, it had jurisdiction to order compliance and specify the amount owing and the manner in which the father should comply.

Ex parte Whitehead, 908 S.W.2d 68 (Tex. App.—Houston [1st Dist.] 1995, orig. proceeding). When the initial order provided that a parent must maintain health insurance "at all times," a contempt order in the transferee state was void when the parent failed to pay on the 15th day of each month in a specified amount as expected by the transferee court.

Sec. 159.306. INAPPROPRIATE TRIBUNAL

If a petition or comparable pleading is received by an inappropriate tribunal of this state, that tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 10, eff. Sept. 1, 1997.

Sec. 159.307. DUTIES OF SUPPORT ENFORCEMENT AGENCY

(a) A support enforcement agency of this state, on request, shall provide services to a petitioner in a proceeding under this chapter.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) take all steps necessary to enable an appropriate tribunal of this state, another state, or a foreign country to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time, and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or a judgment stated in a foreign currency shall convert the amount stated in the for-

eign currency into the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall issue, or request a tribunal of this state to issue, a child support order and an income-withholding order that redirects payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state under Section 159.319.

(f) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 11, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 17, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 19, eff. July 1, 2015.

Sec. 159.308. DUTY OF ATTORNEY GENERAL AND GOVERNOR

(a) If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

(b) The governor may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 18, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 20, eff. July 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 21, eff. July 1, 2015.

Sec. 159.309. PRIVATE COUNSEL

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 159.310. DUTIES OF STATE INFORMATION AGENCY

(a) The Title IV-D agency is the state information agency under this chapter.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from another state or a foreign country; and

(4) obtain information concerning the location of the obligor and the obligor's property in this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 19, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 22, eff. July 1, 2015.

Sec. 159.311. PLEADINGS AND ACCOMPANYING DOCUMENTS

(a) In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or foreign country must file a petition. Unless otherwise ordered under Section 159.312, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 20, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 23, eff. July 1, 2015.

Sec. 159.312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES

If a party alleges in an affidavit or pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 21, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 24, eff. July 1, 2015.

ANNOTATIONS

In re M.I.M., 370 S.W.3d 94 (Tex. App.—Dallas 2012, pet. denied). Although section 159.311 requires the petition to include the name and address of each child, redaction of the child's address because of threats of violence was permitted under the Family Code and was not a basis to deny jurisdiction.

Sec. 159.313. COSTS AND FEES

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred

by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Subchapter G, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 12, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 25, eff. July 1, 2015.

ANNOTATIONS

Ex parte Helms, 259 S.W.2d 184 (Tex. 1953, orig. proceeding). Applying former law, a defendant's rights against incarceration for nonpayment of a debt are not violated when the unpaid attorney's fees and costs arise out of child support obligations.

In re S.N.A., No. 2-07-349-CV, 2008 WL 4938108 (Tex. App.—Fort Worth Nov. 20, 2008, no pet.) (mem. op.). Where attorney testified to his fees, including the amount of time he had expended to enforce a Canadian support order and the amounts charged by the expert witness, the award of fees and costs was not an abuse of discretion.

Sec. 159.314. LIMITED IMMUNITY OF PETITIONER

(a) Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while physically present in this state to participate in the proceeding.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 22, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 26, eff. July 1, 2015.

Sec. 159.315. NONPARENTAGE AS DEFENSE

A party whose parentage of a child has been previously determined by or under law may not plead nonparentage as a defense to a proceeding under this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re J.I.Z., 170 S.W.3d 881 (Tex. App.—Corpus Christi 2005, no pet.). Notwithstanding alleged DNA test results obtained after judgment, a man could not use a modification suit as a means to terminate child support obligations once adjudicated to be the father.

Sec. 159.316. SPECIAL RULES OF EVIDENCE AND PROCEDURE

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in an affidavit or document, that would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child furnished to the adverse party at least 10 days before trial are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other electronic means that does not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 23, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 344 (S.B. 1151), Sec. 1, eff. June 17, 2005. Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 27, eff. July 1, 2015.

ANNOTATIONS

In re Braden, No. 14-17-01014-CV, 2018 WL 1004903 (Tex. App.—Houston [14th Dist.] Feb. 22, 2018, orig. proceeding) (mem. op.). Under subsection 159.316(f), the trial court's obligation to permit an out-of-state witness to give testimony by phone, audiovisual means, or other electronic means is mandatory, not discretionary.

Arnell v. Arnell, 416 S.W.3d 188 (Tex. App.—Dallas 2013, no pet.). The trial court did not err by admitting the wife's affidavit into evidence because her physical presence at trial was not required under subsection 159.316(a), and the contents of the affidavit would not have been hearsay had she given such testimony in person under subsection 159.316(b).

Attorney General v. Litten, 999 S.W.2d 74 (Tex. App.—Houston [14th Dist.] 1999, no pet.). Because of UIFSA's special rules of evidence, Texas courts must take judicial notice of other states' statutes of limitations. An affidavit from a

Missouri attorney for the Division of Child Support Enforcement correctly provided the trial court with a verified copy of a Missouri statute notwithstanding a party's hearsay objection.

Sec. 159.317. COMMUNICATIONS BETWEEN TRIBUNALS

A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail, or by other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 24, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 28, eff. July 1, 2015.

Sec. 159.318. ASSISTANCE WITH DISCOVERY

A tribunal of this state may:

(1) request a tribunal outside this state to assist in obtaining discovery; and

(2) on request, compel a person over whom the tribunal has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 29, eff. July 1, 2015.

Sec. 159.319. RECEIPT AND DISBURSEMENT OF PAYMENTS

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received under a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If the obligor, the obligee who is an individual, and the child do not reside in this state, on request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee reflecting the redirected payments.

(c) The support enforcement agency of this state on receiving redirected payments from another state under a law similar to Subsection (b) shall provide to a requesting party or a tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 25, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 30, eff. July 1, 2015.

SUBCHAPTER E. ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE

Sec. 159.401. ESTABLISHMENT OF SUPPORT ORDER

(a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(1) the individual seeking the order resides outside this state; or

(2) the support enforcement agency seeking the order is located outside this state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) a presumed father of the child;

(2) petitioning to have his paternity adjudicated;

(3) identified as the father of the child through genetic testing;

(4) an alleged father who has declined to submit to genetic testing;

(5) shown by clear and convincing evidence to be the father of the child;

(6) an acknowledged father as provided by applicable state law;

(7) the mother of the child; or

(8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) On finding, after notice and an opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders under Section 159.305.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 26, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 32, eff. July 1, 2015.

ANNOTATIONS

Office of the Attorney General of Texas v. Long, 401 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2013, no pet.). Where a North Carolina divorce decree did not make any provisions for child support, a petition filed by the Texas Office of the Attorney General as a suit to establish support, not a suit to modify support, was proper, and the Texas court had authority to order support since North Carolina did not acquire continuing, exclusive jurisdiction.

Sec. 159.402. PROCEEDING TO DETERMINE PARENTAGE

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this chapter or a law or procedure substantially similar to this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 33, eff. July 1, 2015.

SUBCHAPTER F. ENFORCEMENT OF SUPPORT ORDER WITHOUT REGISTRATION

Sec. 159.501. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING ORDER OF ANOTHER STATE

An income-withholding order issued in another state may be sent by or on behalf of the obligee or by the support enforcement agency to the person defined as the obligor's employer under Chapter 158 without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

Amended by Acts 1997, 75th Leg., ch. 607, Sec. 13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 27, eff. Sept. 1, 2003.

Sec. 159.502. EMPLOYER'S COMPLIANCE WITH INCOME-WITHHOLDING ORDER OF ANOTHER STATE

(a) On receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if the order had been issued by a tribunal of this state.

(c) Except as otherwise provided in Subsection (d) and Section 159.503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order that specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support and dental support, whether in the form of periodic cash payments, stated as a sum certain, or ordering the obligor to provide health insurance coverage or dental insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income-withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer must implement the withholding order and forward the child support payment.

Amended by Acts 1997, 75th Leg., ch. 607, Sec. 13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 28, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 39, eff. September 1, 2018.

Sec. 159.503. EMPLOYER'S COMPLIANCE WITH TWO OR MORE INCOME-WITHHOLDING ORDERS

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

Added by Acts 1997, 75th Leg., ch. 607, Sec. 13, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 29, eff. Sept. 1, 2003.

Sec. 159.504. IMMUNITY FROM CIVIL LIABILITY

An employer who complies with an income-withholding order issued in another state in accordance with this subchapter is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

Added by Acts 1997, 75th Leg., ch. 607, Sec. 13, eff. Sept. 1, 1997.

Sec. 159.505. PENALTIES FOR NONCOMPLIANCE

An employer who wilfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

Added by Acts 1997, 75th Leg., ch. 607, Sec. 13, eff. Sept. 1, 1997.

Sec. 159.506. CONTEST BY OBLIGOR

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Subchapter G or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(b) The obligor shall give notice of the contest to:

(1) a support enforcement agency providing services to the obligee;

(2) each employer that has directly received an income-withholding order relating to the obligor; and

(3) the person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee.

Added by Acts 1997, 75th Leg., ch. 607, Sec. 13, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 30, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 35, eff. July 1, 2015.

Sec. 159.507. ADMINISTRATIVE ENFORCEMENT OF ORDERS

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(b) On receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order under this chapter.

Added by Acts 1997, 75th Leg., ch. 607, Sec. 13, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 31, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 36, eff. July 1, 2015.

SUBCHAPTER G. REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER

PART 1. REGISTRATION FOR ENFORCEMENT OF SUPPORT ORDER

Sec. 159.601. REGISTRATION OF ORDER FOR ENFORCEMENT

A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 38, eff. July 1, 2015.

Sec. 159.602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT

(a) Except as otherwise provided by Section 159.706, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(A) the obligor's address and social security number;

(B) the name and address of the obligor's employer and any other source of income of the obligor; and

(C) a description of and the location of property of the obligor in this state not exempt from execution; and

(5) except as otherwise provided by Section 159.312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a copy of each support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

(e) A request for a determination of which order is the controlling order may be filed separately from or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 296, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1247, Sec. 33, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 39, eff. July 1, 2015.

ANNOTATIONS

In re T.F., No. 09-14-00064-CV, 2015 WL 216396 (Tex. App.—Beaumont Jan. 15, 2015, no pet.). Father's pleadings seeking to enforce a Louisiana child support order substantially complied with section 159.602 even though "registration" was not mentioned, and trial court erred in dismissing his case for lack of subject matter jurisdiction.

In re Chapman, 973 S.W.2d 346 (Tex. App.—Amarillo 1998, no pet.). The procedural requirements of UIFSA are mandatory. Without providing a sworn statement by the parent seeking registration of an order or by the Attorney General, and without a certified statement by the out-of-state custodian of records identifying the judgment, registration of an out-of-state child support judgment cannot be confirmed under UIFSA.

Cowan v. Moreno, 903 S.W.2d 119 (Tex. App.—Austin 1995, no writ). The date that a non-Texas court rendered judgment, not the date that it decreed the parties to be divorced, was the date the foreign decree was "entered" for purposes of determining whether UIFSA applied.

Sec. 159.603. EFFECT OF REGISTRATION FOR ENFORCEMENT

(a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this subchapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 40, eff. July 1, 2015.

ANNOTATIONS

Dalton v. Dalton, 551 S.W.3d 126, 136 (Tex. 2018). Texas has chosen to apply its own enforcement methods to enforce registered support orders issued in other states. As such, although Oklahoma has chosen to allow wage withholding to enforce all agreed spousal support orders, Texas is not required to give full faith and credit to the method of collection used in that state when enforcing a registered Oklahoma support order. Instead, Texas may enforce it in the same manner and by the same procedures as it would an order issued in Texas.

Thompson v. Thompson, 893 S.W.2d 301 (Tex. App.—Houston [1st Dist.] 1995, no writ). If a state has adopted laws that are substantially similar to UIFSA, then no Texas court may modify a child support order from that state. A Texas court has authority only to register and enforce the existing order.

Sec. 159.604. CHOICE OF LAW

(a) Except as otherwise provided by Subsection (d), the law of the issuing state or foreign country governs:

(1) the nature, extent, amount, and duration of current payments under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state, or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

(d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, the tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including that state's or country's law on interest on arrears, on current and future support, and on consolidated arrears.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 14, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 34, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 41, eff. July 1, 2015.

ANNOTATIONS

In re R.R., No. 02-15-00032-CV, 2017 WL 632897 (Tex. App.—Fort Worth Jan. 16, 2017, no pet.) (mem. op.). A Colorado court ordered father to pay child support. Later, a Florida court modified the Colorado order. Under subsection 159.604(a)(2), the law of the first state to issue an order applies to the computation of arrearages and accrual of interest because the first state remains as the issuing state.

Attorney General v. Buhrle, 210 S.W.3d 714 (Tex. App.—Corpus Christi 2006, pet. denied). Courts should look to the out-of-state child support order as the controlling order under UIFSA, and not subsequent orders such as orders for contempt, because full faith and credit is not given to enforcement orders.

Attorney General v. Litten, 999 S.W.2d 74 (Tex. App.—Houston [14th Dist.] 1999, no pet.). A "verified copy" of the law of another state is the functional equivalent of a "certified copy" of the state's law for purposes of the requirement that the party produce a certified copy to the trial court before an out-of-state law may be applied.

PART 2. CONTEST OF VALIDITY OR ENFORCEMENT

Sec. 159.605. NOTICE OF REGISTRATION OF ORDER

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice unless the registered order is under Section 159.707;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, the notice must also:

(1) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in Subsection (b) apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) On registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer under Chapter 158.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 15, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1247, Sec. 35, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 43, eff. July 1, 2015.

ANNOTATIONS

In re T.F., No. 09-14-00064-CV, 2015 WL 216396 (Tex. App.—Beaumont Jan. 15, 2015, no pet.). Failure to give the required notice of the father's registration of a child support judgment to the mother was not a jurisdictional defect. Mother had actual notice, answered and appeared, making dismissal for lack of subject matter jurisdiction improper.

Glass v. Williamson, 137 S.W.3d 114 (Tex. App.—Houston [1st Dist.] 2004, no pet.). When one parent registers an out-of-state order, a hearing must be timely requested (within twenty days) or the right to a hearing is waived, and the out-of-state order is confirmed as a matter of law. *See also Attorney General v. Buhrle*, 210 S.W.3d 714 (Tex. App.—Corpus Christi 2006, pet. denied) (date runs from the day parent desiring a hearing receives service of notice of the registration); *In re Kuykendall*, 957 S.W.2d 907 (Tex. App.—Texarkana 1997, no pet.) (same).

Sec. 159.606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED SUPPORT ORDER

(a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by Section 159.605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages under Section 159.607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 16, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 44, eff. July 1, 2015.

ANNOTATIONS

In re A.W.D., No. 07-12-00329-CV, 2014 WL 3697057 (Tex. App.—Amarillo July 23, 2014, no pet.). A party contesting the validity or enforcement of a registered order must request a hearing within twenty days after the notice of registration, even if the ground of the attack is that the issuing tribunal lacked personal jurisdiction over the contestant.

Glass v. Williamson, 137 S.W.3d 114 (Tex. App.—Houston [1st Dist.] 2004, no pet.). When one parent registers an out-of-state order, a hearing must be timely requested (within twenty days) or the right to a hearing is waived, and the out-of-state order is confirmed as a matter of law. *See also Attorney General v. Buhrle*, 210 S.W.3d 714 (Tex. App.—Corpus Christi 2006, pet. denied) (date runs from the day parent desiring a hearing receives service of notice of the registration); *In re Kuykendall*, 957 S.W.2d 907 (Tex. App.—Texarkana 1997, no pet.) (same).

Cowan v. Moreno, 903 S.W.2d 119 (Tex. App.—Austin 1995, no writ). The amount of child support arrearages, if disputed, must be litigated in the state that has registered the child support order.

Sec. 159.607. CONTEST OF REGISTRATION OR ENFORCEMENT

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) the issuing tribunal lacked personal jurisdiction over the contesting party;

(2) the order was obtained by fraud;

(3) the order has been vacated, suspended, or modified by a later order;

(4) the issuing tribunal has stayed the order pending appeal;

(5) there is a defense under the law of this state to the remedy sought;

(6) full or partial payment has been made;

(7) the statute of limitation under Section 159.604 precludes enforcement of some or all of the alleged arrearages; or

(8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under Subsection (a), a tribunal may stay enforcement of the registered support order, continue the proceeding to permit production

of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under Subsection (a) to the validity or enforcement of the registered support order, the registering tribunal shall issue an order confirming the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 36, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 45, eff. July 1, 2015.

ANNOTATIONS

In re Kuykendall, 957 S.W.2d 907 (Tex. App.—Texarkana 1997, no pet.). The section in an out-of-state decree pertaining to child support was sufficiently clear that a parent "shall" make child support payments, absent language that the parent was "ordered, adjudged, and decreed" to do so, particularly given that the subsequent section of the decree referred to child support and contained "ordered, adjudged, and decreed" language.

Cowan v. Moreno, 903 S.W.2d 119 (Tex. App.—Austin 1995, no writ). The amount of child support arrearages, if disputed, must be litigated in the state that has registered the child support order.

Saunders v. Saunders, 650 S.W.2d 534 (Tex. App.—Houston [14th Dist.] 1983, no writ). In a suit brought under the Uniform Reciprocal Enforcement of Support Act, the precursor to UIFSA, complaints on appeal that the petition contained hearsay were not properly before the court of appeals when the objecting parent agreed to the substance of the same matters when testifying, and the trial court relied on that testimony when reaching its decision.

Sec. 159.608. CONFIRMED ORDER

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 46, eff. July 1, 2015.

ANNOTATIONS

Glass v. Williamson, 137 S.W.3d 114 (Tex. App.—Houston [1st Dist.] 2004, no pet.). When one parent registers an out-of-state order, a hearing must be timely requested (within twenty days) or the right to a hearing is waived, and the out-of-state order is confirmed as a matter of law. *See also Attorney General v. Buhrle*, 210 S.W.3d 714 (Tex. App.—Corpus Christi 2006, pet. denied) (date runs from the day parent desiring a hearing receives service of notice of the registration); *In re Kuykendall*, 957 S.W.2d 907 (Tex. App.—Texarkana 1997, no pet.) (same).

PART 3. REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE

Sec. 159.609. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Sections 159.601 through 159.608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 48, eff. July 1, 2015.

Sec. 159.610. EFFECT OF REGISTRATION FOR MODIFICATION

A tribunal of this state may enforce a child support order of another state registered for purposes of modification in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of Section 159.611 or 159.613 have been met.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 37, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 49, eff. July 1, 2015.

Sec. 159.611. MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE

(a) If Section 159.613 does not apply, on petition a tribunal of this state may modify a child support order issued in another state that is registered in this state if, after notice and hearing, the tribunal finds that:

(1) the following requirements are met:

(A) the child, the obligee who is an individual, and the obligor do not reside in the issuing state;

(B) a petitioner who is a nonresident of this state seeks modification; and

(C) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) this state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under Section 159.207 establishes the aspects of the support order that are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(e) On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

(f) Notwithstanding Subsections (a) through (e) of this section and Section 159.201(b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) one party resides in another state; and

(2) the other party resides outside the United States.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 607, Sec. 17, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 5.0026, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1247, Sec. 38, eff. Sept. 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 21, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 50, eff. July 1, 2015.

ANNOTATIONS

In re Martinez, 450 S.W.3d 157 (Tex. App.—San Antonio 2014, orig. proceeding). Once a New York court had rendered the controlling order and retained continuing jurisdiction of a child support obligation for a disabled adult child, a Texas trial court could not modify the duration of the New York order to impose a further child support obligation.

Sec. 159.612. Recognition of Order Modified in Another State

If a child support order issued by a tribunal of this state is modified by a tribunal of another state that assumed jurisdiction under the Uniform Interstate Family Support Act, a tribunal of this state:

(1) may enforce the order that was modified only as to arrears and interest accruing before the modification;

(2) may provide appropriate relief for violations of the order that occurred before the effective date of the modification; and

(3) shall recognize the modifying order of the other state, on registration, for the purpose of enforcement.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 39, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 51, eff. July 1, 2015.

Sec. 159.613. Jurisdiction to Modify Child Support Order of Another State When Individual Parties Reside in This State

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Subchapters B and C, this subchapter, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Subchapters D, E, F, H, and I do not apply.

Added by Acts 1997, 75th Leg., ch. 607, Sec. 18, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 52, eff. July 1, 2015.

Sec. 159.614. Notice to Issuing Tribunal of Modification

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Added by Acts 1997, 75th Leg., ch. 607, Sec. 18, eff. Sept. 1, 1997.

PART 4. REGISTRATION AND MODIFICATION OF FOREIGN CHILD SUPPORT ORDER

Sec. 159.615. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF FOREIGN COUNTRY

(a) Except as otherwise provided by Section 159.711, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal regardless of whether the consent to modification of a child support order otherwise required of the individual under Section 159.611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order under this section is the controlling order.

Added by Acts 2003, 78th Leg., ch. 1247, Sec. 40, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 54, eff. July 1, 2015.

Sec. 159.616. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF FOREIGN COUNTRY FOR MODIFICATION

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this state under Sections 159.601 through 159.608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition must specify the grounds for modification.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 55, eff. July 1, 2015.

SUBCHAPTER H. SUPPORT PROCEEDING UNDER CONVENTION

Sec. 159.701. DEFINITIONS

In this subchapter:

(1) "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) "Central authority" means the entity designated by the United States or a foreign country described in Section 159.102(5)(D) to perform the functions specified in the Convention.

(3) "Convention support order" means a support order of a tribunal of a foreign country described in Section 159.102(5)(D).

(4) "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.

(5) "Foreign central authority" means the entity designated by a foreign country described in Section 159.102(5)(D) to perform the functions specified in the Convention.

(6) "Foreign support agreement":

(A) means an agreement for support in a record that:

(i) is enforceable as a support order in the country of origin;

(ii) has been:

(a) formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(b) authenticated by, or concluded, registered, or filed with a foreign tribunal; and

(iii) may be reviewed and modified by a foreign tribunal; and

(B) includes a maintenance arrangement or authentic instrument under the Convention.

(7) "United States central authority" means the secretary of the United States Department of Health and Human Services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 41, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 57, eff. July 1, 2015.

Sec. 159.702. APPLICABILITY

This subchapter applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this subchapter is inconsistent with Subchapters B through G, this subchapter controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.703. RELATIONSHIP OF OFFICE OF ATTORNEY GENERAL TO UNITED STATES CENTRAL AUTHORITY

The office of the attorney general of this state is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.704. INITIATION BY OFFICE OF ATTORNEY GENERAL OF SUPPORT PROCEEDING UNDER CONVENTION

(a) In a support proceeding under this subchapter, the office of the attorney general of this state shall:

(1) transmit and receive applications; and

(2) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) recognition or recognition and enforcement of a foreign support order;

(2) enforcement of a support order issued or recognized in this state;

(3) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) establishment of a support order if recognition of a foreign support order is refused under Section 159.708(b)(2), (4), or (9);

(5) modification of a support order of a tribunal of this state; and

(6) modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(1) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(2) modification of a support order of a tribunal of this state; and

(3) modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.705. DIRECT REQUEST

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, Sections 159.706 through 159.713 apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

(1) a security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) an obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the office of the attorney general.

(e) This subchapter does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.706. REGISTRATION OF CONVENTION SUPPORT ORDER

(a) Except as otherwise provided in this subchapter, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in Subchapter G.

(b) Notwithstanding Sections 159.311 and 159.602(a), a request for registration of a Convention support order must be accompanied by:

(1) the complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) a record stating that the support order is enforceable in the issuing country;

(3) if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) a record showing the amount of arrears, if any, and the date the amount was calculated;

(5) a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under Section 159.707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.707. CONTEST OF REGISTERED CONVENTION SUPPORT ORDER

(a) Except as otherwise provided in this subchapter, Sections 159.605 through 159.608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration. If the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in Subsection (b), the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in Section 159.708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) may not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.708. RECOGNITION AND ENFORCEMENT OF REGISTERED CONVENTION SUPPORT ORDER

(a) Except as otherwise provided in Subsection (b), a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with Section 159.201;

(3) the order is not enforceable in the issuing country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with Section 159.706 lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this chapter in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of Section 159.711.

(c) If a tribunal of this state does not recognize a Convention support order under Subsection (b)(2), (4), or (9):

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) the office of the attorney general shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under Section 159.704.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.709. PARTIAL ENFORCEMENT

If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.710. FOREIGN SUPPORT AGREEMENT

(a) Except as otherwise provided by Subsections (c) and (d), a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) the complete text of the foreign support agreement; and

(2) a record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) the agreement was obtained by fraud or falsification;

(3) the agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this chapter in this state; or

(4) the record submitted under Subsection (b) lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.711. MODIFICATION OF CONVENTION CHILD SUPPORT ORDER

(a) A tribunal of this state may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child support order because the order is not recognized in this state, Section 159.708(c) applies.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.712. PERSONAL INFORMATION; LIMIT ON USE

Personal information gathered or transmitted under this subchapter may be used only for the purposes for which it was gathered or transmitted.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

Sec. 159.713. RECORD IN ORIGINAL LANGUAGE; ENGLISH TRANSLATION

A record filed with a tribunal of this state under this subchapter must be in the original language and, if not in English, must be accompanied by an English translation.

Added by Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 58, eff. July 1, 2015.

SUBCHAPTER I. INTERSTATE RENDITION

Sec. 159.801. GROUNDS FOR RENDITION

(a) For purposes of this subchapter, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from that state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 42, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 59, eff. July 1, 2015.

Sec. 159.802. CONDITIONS OF RENDITION

(a) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that, not less than 60 days previously, the obligee had initiated proceedings for support under this chapter or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 43, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 60, eff. July 1, 2015.

SUBCHAPTER J. MISCELLANEOUS PROVISIONS

Sec. 159.901. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 44, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 368 (H.B. 3538), Sec. 61, eff. July 1, 2015.

ANNOTATIONS

Cowan v. Moreno, 903 S.W.2d 119 (Tex. App.—Austin 1995, no writ). The purpose of UIFSA is to streamline and expedite interstate and intrastate enforcement of child support orders.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. APPLICATION AND CONSTRUCTION

Sec. 160.001. APPLICATION AND CONSTRUCTION

This chapter shall be applied and construed to promote the uniformity of the law among the states that enact the Uniform Parentage Act.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.002. CONFLICTS BETWEEN PROVISIONS

If a provision of this chapter conflicts with another provision of this title or another state statute or rule and the conflict cannot be reconciled, this chapter prevails.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 160.101. SHORT TITLE

This chapter may be cited as the Uniform Parentage Act.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.102. DEFINITIONS

In this chapter:

(1) "Adjudicated father" means a man who has been adjudicated by a court to be the father of a child.

(2) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:

(A) intrauterine insemination;

(B) donation of eggs;

(C) donation of embryos;

(D) in vitro fertilization and transfer of embryos; and

(E) intracytoplasmic sperm injection.

(3) "Child" means an individual of any age whose parentage may be determined under this chapter.

(4) "Commence" means to file the initial pleading seeking an adjudication of parentage in a court of this state.

(5) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under Subchapter D or by an adjudication by a court.

(6) "Donor" means an individual who provides eggs or sperm to a licensed physician to be used for assisted reproduction, regardless of whether the eggs or sperm are provided for consideration. The term does not include:

(A) a husband who provides sperm or a wife who provides eggs to be used for assisted reproduction by the wife;

(B) a woman who gives birth to a child by means of assisted reproduction; or

(C) an unmarried man who, with the intent to be the father of the resulting child, provides sperm to be used for assisted reproduction by an unmarried woman, as provided by Section 160.7031.

(7) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is identified by other information.

(8) "Genetic testing" means an analysis of an individual's genetic markers to exclude or identify a man as the father of a child or a woman as the mother of a child. The term includes an analysis of one or more of the following:

(A) deoxyribonucleic acid; and

(B) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(9) "Intended parents" means individuals who enter into an agreement providing that the individuals will be the parents of a child born to a gestational mother by means of assisted reproduction, regardless of whether either individual has a genetic relationship with the child.

(10) "Man" means a male individual of any age.

(11) "Parent" means an individual who has established a parent-child relationship under Section 160.201.

(12) "Paternity index" means the likelihood of paternity determined by calculating the ratio between:

(A) the likelihood that the tested man is the father of the child, based on the genetic markers of the tested man, the mother of the child, and the child, conditioned on the hypothesis that the tested man is the father of the child; and

(B) the likelihood that the tested man is not the father of the child, based on the genetic markers of the tested man, the mother of the child, and the child, conditioned on the hypothesis that the tested man is not the father of the child and that the father of the child is of the same ethnic or racial group as the tested man.

(13) "Presumed father" means a man who, by operation of law under Section 160.204, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

(14) "Probability of paternity" means the probability, with respect to the ethnic or racial group to which the alleged father belongs, that the alleged father is the father of the child, compared to a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

(16) "Signatory" means an individual who authenticates a record and is bound by its terms.

(17) "Support enforcement agency" means a public official or public agency authorized to seek:

(A) the enforcement of child support orders or laws relating to the duty of support;

(B) the establishment or modification of child support;

(C) the determination of parentage;

(D) the location of child-support obligors and their income and assets; or

(E) the conservatorship of a child or the termination of parental rights.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 39, eff. September 1, 2007.

ANNOTATIONS

In re R.J., 381 S.W.3d 619, 624 (Tex. App.—San Antonio 2012, no pet.). This case includes a statutory analysis of the definition of "parent."

Sec. 160.103. SCOPE OF CHAPTER; CHOICE OF LAW

(a) Except as provided by Chapter 233, this chapter governs every determination of parentage in this state.

(b) The court shall apply the law of this state to adjudicate the parent-child relationship. The applicable law does not depend on:

(1) the place of birth of the child; or

(2) the past or present residence of the child.

(c) This chapter does not create, enlarge, or diminish parental rights or duties under another law of this state.

(d) Repealed by Acts 2003, 78th Leg., ch. 457, Sec. 3.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 457, Sec. 3, eff. Sept. 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 22, eff. June 19, 2009.

ANNOTATIONS

In re S.B.S., 282 S.W.3d 711, 713–15 (Tex. App.—Amarillo 2009, pet. denied). Although the Rules of Civil Procedure generally apply to parentage suits, Tex. Fam. Code ch. 233 provides a specific means of establishing parentage and child support obligations that deviates from the general rules and establishes a process by which a default judgment may be taken in a child support review process proceeding without the issuance of a citation.

Sec. 160.104. AUTHORIZED COURTS

The following courts are authorized to adjudicate parentage under this chapter:

(1) a court with jurisdiction to hear a suit affecting the parent-child relationship under this title; or

(2) a court with jurisdiction to adjudicate parentage under another law of this state.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

In re McMillan, 265 S.W.3d 918, 920–21 (Tex. App.—Austin 2008, orig. proceeding). This section addresses subject matter jurisdiction for parentage adjudications, but it does not apply to challenges to acknowledgments of paternity. A court in another state may have jurisdiction to hear a parentage action or SAPCR, but a challenge to a Texas acknowledgment of paternity should be heard in Texas.

Sec. 160.105. PROTECTION OF PARTICIPANTS

A proceeding under this chapter is subject to the other laws of this state governing the health, safety, privacy, and liberty of a child or any other individual who may be jeopardized by the disclosure of identifying information, including the person's address, telephone number, place of employment, and social security number and the name of the child's day-care facility and school.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.106. DETERMINATION OF MATERNITY

The provisions of this chapter relating to the determination of paternity apply to a determination of maternity.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

In re M.M.M., 428 S.W.3d 389 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Petitioner sought declaratory relief that determination of maternity and paternity requires equal application of the paternity statutes including rebuttable presumptions. The court interpreted Tex. Fam. Code § 160.106 "to mean that the procedures to adjudicating paternity are equally applicable when it is necessary to adjudicate maternity." Further, the court concluded that Tex. Fam. Code § 160.106 does not permit genetic testing to rebut the maternity of a woman who gives birth to a child.

Goodson v. Castellanos, 214 S.W.3d 741, 751 (Tex. App.—Austin 2007, pet. denied). Although Tex. Fam. Code § 160.102 states that an adjudicated father is a man who has been adjudicated to be the father of a child, and this section provides that provisions relating to determination of paternity also apply to determination of maternity, the Family Code does not contain a numerical restriction to one parent of each sex. There is no direct statement of public policy found in the Family Code or in the Texas Constitution prohibiting the adoption of a child by two individuals of the same sex.

SUBCHAPTER C. PARENT-CHILD RELATIONSHIP

Sec. 160.201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP

(a) The mother-child relationship is established between a woman and a child by:

(1) the woman giving birth to the child;

(2) an adjudication of the woman's maternity; or

(3) the adoption of the child by the woman.

(b) The father-child relationship is established between a man and a child by:

(1) an unrebutted presumption of the man's paternity of the child under Section 160.204;

(2) an effective acknowledgment of paternity by the man under Subchapter D, unless the acknowledgment has been rescinded or successfully challenged;

(3) an adjudication of the man's paternity;

(4) the adoption of the child by the man; or

(5) the man's consenting to assisted reproduction by his wife under Subchapter H, which resulted in the birth of the child.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

COMMENTS

This section is also relevant to probate and estates practices because, for purposes of paternal inheritance, the father-child relationship is established under the circumstances set forth in this section. *See, e.g., In re Estate of Forister*, 421 S.W.3d 175 (Tex. App.—San Antonio 2013, pet. denied); *In re Estate of Wallace*, No. 03-10-00555-CV, 2013 WL 4817740 (Tex. App.—Austin Aug. 28, 2013, pet. denied) (mem. op.).

ANNOTATIONS

In re A.E., No. 09-16-00019-CV, 2017 WL 1535101 (Tex. App.—Beaumont Apr. 27, 2017, pet. denied) (mem. op.). The appellate court declined to extend the *Obergefell v. Hodges* decision to standing in a SAPCR case for a same-sex spouse upon divorce. The court held, "This is not a case involving the failure of a Texas court to give recognition to the marriage of [the spouses], nor is it a case involving a constitutional challenge to any statute. [Spouse] did not make a constitutional challenge to the Texas statutes at trial. . . . We agree with the legal conclusion reached by the trial court that *Obergefell* does not confer standing upon [spouse] to maintain a parentage claim. Furthermore, we conclude that *Obergefell* does not require this Court to act as the Legislature and re-write the Texas statutes that define who has standing to bring a SAPCR. . . . *Obergefell* did not hold that every state law related to the marital relationship or the parent-child relationship must be 'gender neutral.'"

In re M.M.M., 428 S.W.3d 389 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). The maternity of a gestational mother who conceived from donor eggs and sperm is established by giving birth and is not rebuttable by genetic testing. Tex. Fam. Code § 160.201 makes no reference to the rebuttable presumption of maternity.

In re R.J., 381 S.W.3d 619, 623 (Tex. App.—San Antonio 2012, no pet.). If a father-child relationship between a man and the child has been established, the man is entitled to notice of a parental rights termination proceeding, regardless whether he registers with the registry of paternity. Constitutional protections apply to an unwed father who has a developed parent-child relationship with the child. However, the statutory presumptions to appoint a parent as a managing or possessory conservator do not apply to alleged fathers; if an unwed father fails to develop an actual parent-child relationship, the United States Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie.

Sec. 160.202. NO DISCRIMINATION BASED ON MARITAL STATUS

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE

Unless parental rights are terminated, a parent-child relationship established under this chapter applies for all purposes, except as otherwise provided by another law of this state.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.204. PRESUMPTION OF PATERNITY

(a) A man is presumed to be the father of a child if:

(1) he is married to the mother of the child and the child is born during the marriage;

(2) he is married to the mother of the child and the child is born before the 301st day after the date the marriage is terminated by death, annulment, declaration of invalidity, or divorce;

(3) he married the mother of the child before the birth of the child in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or before the 301st day after the date the marriage is terminated by death, annulment, declaration of invalidity, or divorce;

(4) he married the mother of the child after the birth of the child in apparent compliance with law, regardless of whether the marriage is or could be declared invalid, he voluntarily asserted his paternity of the child, and:

(A) the assertion is in a record filed with the vital statistics unit;

(B) he is voluntarily named as the child's father on the child's birth certificate; or

(C) he promised in a record to support the child as his own; or

(5) during the first two years of the child's life, he continuously resided in the household in which the child resided and he represented to others that the child was his own.

(b) A presumption of paternity established under this section may be rebutted only by:

(1) an adjudication under Subchapter G; or

(2) the filing of a valid denial of paternity by a presumed father in conjunction with the filing by another person of a valid acknowledgment of paternity as provided by Section 160.305.

Amended by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1248, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.055, eff. April 2, 2015.

ANNOTATIONS

In re O.R.M., 559 S.W.3d 738, 745 (Tex. App.—El Paso 2018, no pet.). Alleged father argued that he proved by uncontroverted evidence the existence of a common law marriage with the mother and, therefore, that he was the presumed father of the children. The court found that the couple's cohabitation for fifteen years and the mother's reference to the man as her husband was insufficient to prove, as a matter of law, an agreement to be married. Consequently, the court found the alleged father failed to establish the existence of an informal marriage and that he was not presumed to be the father of the children.

In re A.E., No. 09-16-00019-CV, 2017 WL 1535101 (Tex. App.—Beaumont Apr. 27, 2017, pet. denied) (mem. op.). The appellate court declined to extend the *Obergefell v. Hodges* decision to standing in a SAPCR case for a same-sex spouse upon divorce. The court held, "This is not a case involving the failure of a Texas court to give recognition to the marriage of [the spouses], nor is it a case involving a constitutional challenge to any statute. [Spouse] did not make a constitutional challenge to the Texas statutes at trial. . . . We agree with the legal conclusion reached by the trial court that *Obergefell* does not confer standing upon [spouse] to maintain a parentage claim. Furthermore, we conclude that *Obergefell* does not require this Court to act as the Legislature and re-write the Texas statutes that define who has standing to bring a SAPCR. . . . *Obergefell* did not hold that every state law related to the marital relationship or the parent-child relationship must be 'gender neutral.'"

In re S.T., 467 S.W.3d 720 (Tex. App.—Fort Worth 2015, no pet.). Parties cannot stipulate to parentage of a child. Husband and wife could not stipulate to husband's nonpaternity by agreement. A presumption of paternity is rebuttable by adjudication under Tex. Fam. Code. ch. 160, subch. G, or filing of a denial of paternity in conjunction with an acknowledgment of paternity by a third person.

In re X.C.B., No. 14-08-00851-CV, 2009 WL 2370911 (Tex. App.—Houston [14th Dist.] July 30, 2009, pet. denied) (memo. op.). An alleged father argued that he considered himself to be the common-law husband of the children's mother, which entitled him to a presumption of paternity. However, the presumption of paternity can be rebutted by genetic testing excluding the husband as the father of the children pursuant to Tex. Fam. Code § 160.631. Because the genetic tests excluded him as the father, and he failed to produce other genetic testing showing him to be the father, the presumption under Tex. Fam. Code § 160.204 was rebutted.

In re Rodriguez, 248 S.W.3d 444, 450 (Tex. App.—Dallas 2008, no pet.). A presumed father is, by operation of law, recognized as the father of the child until that status is rebutted or confirmed in a judicial proceeding.

In re Narvaiz, 193 S.W.3d 695, 698 (Tex. App.—Beaumont 2006, orig. proceeding). Among other rights, and absent court orders to the contrary, each parent of a child has a right to physical possession of a child and to designate the residence of the child. By definition, a presumed parent is a parent of a child unless the presumption is rebutted.

SUBCHAPTER D. VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

Sec. 160.301. ACKNOWLEDGMENT OF PATERNITY

The mother of a child and a man claiming to be the biological father of the child may sign an acknowledgment of paternity with the intent to establish the man's paternity.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by Acts 2003, 78th Leg., ch. 1248, Sec. 2, eff. Sept. 1, 2003.

Sec. 160.302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY

(a) An acknowledgment of paternity must:

(1) be in a record;

(2) be signed, or otherwise authenticated, under penalty of perjury by the mother and the man seeking to establish paternity;

(3) state that the child whose paternity is being acknowledged:

(A) does not have a presumed father or has a presumed father whose full name is stated; and

(B) does not have another acknowledged or adjudicated father;

(4) state whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and

(5) state that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of the paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances.

(b) An acknowledgment of paternity is void if it:

(1) states that another man is a presumed father of the child, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the vital statistics unit;

(2) states that another man is an acknowledged or adjudicated father of the child; or

(3) falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.

(c) A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

(d) An acknowledgment of paternity constitutes an affidavit under Section 666(a)(5)(C), Social Security Act (42 U.S.C. Section 666(a)(5)(C)).

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 1, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.056, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 7, eff. September 1, 2015.

COMMENTS

This section was amended in 2011, and it is applicable to acknowledgments of paternity that take effect on or after September 1, 2011. Acknowledgments effective before that date are governed by the former law.

ANNOTATIONS

In re J.A.C., No. 02-15-00554-CV, 2016 WL 3854215 (Tex. App.—Dallas July 13, 2016, no pet.) (mem. op.). Fourteen-year-old twins sought to terminate the parent-child relationship with their acknowledged and adjudicated father. The appellate court held that the father's signing of the children's birth certificates did not satisfy the requirements of an acknowledgment of paternity under Family Code chapter 160, subchapter D.

Sec. 160.303. DENIAL OF PATERNITY

A presumed father of a child may sign a denial of his paternity. The denial is valid only if:

(1) an acknowledgment of paternity signed or otherwise authenticated by another man is filed under Section 160.305;

(2) the denial is in a record and is signed or otherwise authenticated under penalty of perjury; and

(3) the presumed father has not previously:

(A) acknowledged paternity of the child, unless the previous acknowledgment has been rescinded under Section 160.307 or successfully challenged under Section 160.308; or

(B) been adjudicated to be the father of the child.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.304. RULES FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY

(a) An acknowledgment of paternity and a denial of paternity may be contained in a single document or in different documents and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither document is valid until both documents are filed.

(b) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(c) Subject to Subsection (a), an acknowledgment of paternity or denial of paternity takes effect on the date of the birth of the child or the filing of the document with the vital statistics unit, whichever occurs later.

(d) An acknowledgment of paternity or denial of paternity signed by a minor is valid if it otherwise complies with this chapter.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.057, eff. April 2, 2015.

Sec. 160.305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY

(a) Except as provided by Sections 160.307 and 160.308, a valid acknowledgment of paternity filed with the vital statistics unit is the equivalent of an adjudication of the paternity of a child and confers on the acknowledged father all rights and duties of a parent.

(b) Except as provided by Sections 160.307 and 160.308, a valid denial of paternity filed with the vital statistics unit in conjunction with a valid acknowledgment of paternity is the equivalent of an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.058, eff. April 2, 2015.

Sec. 160.306. FILING FEE NOT REQUIRED

The Department of State Health Services may not charge a fee for filing:

(1) an acknowledgment of paternity;

(2) a denial of paternity; or

(3) a rescission of an acknowledgment of paternity or denial of paternity.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 2, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.059, eff. April 2, 2015.

COMMENTS

This section was amended in 2011, and it is applicable to acknowledgments, denials or rescissions filed on or after September 1, 2011. Acknowledgments, denials, or rescissions filed before that date are governed by the former law.

Sec. 160.307. PROCEDURES FOR RESCISSION

(a) A signatory may rescind an acknowledgment of paternity or denial of paternity as provided by this section before the earlier of:

(1) the 60th day after the effective date of the acknowledgment or denial, as provided by Section 160.304; or

(2) the date a proceeding to which the signatory is a party is initiated before a court to adjudicate an issue relating to the child, including a proceeding that establishes child support.

(b) A signatory seeking to rescind an acknowledgment of paternity or denial of paternity must file with the vital statistics unit a completed rescission, on the form prescribed under Section 160.312, in which the signatory declares under penalty of perjury that:

(1) as of the date the rescission is filed, a proceeding has not been held affecting the child identified in the acknowledgment of paternity or denial of paternity, including a proceeding to establish child support;

(2) a copy of the completed rescission was sent by certified or registered mail, return receipt requested, to:

(A) if the rescission is of an acknowledgment of paternity, the other signatory of the acknowledgment of paternity and the signatory of any related denial of paternity; or

(B) if the rescission is of a denial of paternity, the signatories of the related acknowledgment of paternity; and

(3) if a signatory to the acknowledgment of paternity or denial of paternity is receiving services from the Title IV-D agency, a copy of the completed rescission was sent by certified or registered mail to the Title IV-D agency.

(c) On receipt of a completed rescission, the vital statistics unit shall void the acknowledgment of paternity or denial of paternity affected by the rescission and amend the birth record of the child, if appropriate.

(d) Any party affected by the rescission, including the Title IV-D agency, may contest the rescission by bringing a proceeding under Subchapter G to adjudicate the parentage of the child.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 3, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.060, eff. April 2, 2015.

COMMENTS

This section was amended in 2011, and it is applicable to rescissions filed on or after September 1, 2011. Rescissions filed before that date are governed by the former law.

Sec. 160.308. CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION

(a) After the period for rescission under Section 160.307 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact. The proceeding may be commenced at any time before the issuance of an order affecting the child identified in the acknowledgment or denial, including an order relating to support of the child.

(b) A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

(c) Notwithstanding any other provision of this chapter, a collateral attack on an acknowledgment of paternity signed under this chapter may not be maintained after the issuance of an order affecting the child identified in the acknowledgment, including an order relating to support of the child.

(d) For purposes of Subsection (a), evidence that, based on genetic testing, the man who is the signatory of an acknowledgement of paternity is not rebuttably identified as the father of a child in accordance with Section 160.505 constitutes a material mistake of fact.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2005, 79th Leg., Ch. 478 (H.B. 209), Sec. 1, eff. September 1, 2005. Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 4, eff. September 1, 2011.

COMMENTS

This section was amended in 2011, and it is applicable to challenges commenced on or after September 1, 2011. Challenges commenced before that date are governed by the former law.

ANNOTATIONS

In re C.T.H., No. 05-16-01398-CV, 2018 WL 2926737 (Tex. App.—Dallas June 7, 2018, no pet.) (mem. op.). If the child has an acknowledged father, a collateral attack on the acknowledgment of paternity may not be maintained after "the issuance of an order affecting the child identified in the acknowledgment," notwithstanding that the attack is made within four years of the effective date of the acknowledgment.

In re J.A., No. 14-09-00249-CV, 2010 WL 2967718 (Tex. App.—Houston [14th Dist.] Jul. 29, 2010, no pet.) (mem. op.). A person must successfully challenge an acknowledgment of paternity to become entitled to genetic testing. *See In re Attorney General of Texas*, 195 S.W.3d 264, 269 (Tex. App.—San Antonio 2006, orig. proceeding) ("A trial court abuses its discretion when a child's paternity has been legally established and it orders genetic testing before such parentage determination has been set aside."); *see also Amanda v. Montgomery*, 877 S.W.2d 482, 487 (Tex. App.—Houston [1st Dist.] 1994, orig. proceeding). *But see L.J. v. Texas Dep't of Family & Protective Services*, No. 03-11-00435-CV, 2012 WL 3155760 (Tex. App.—Austin Aug. 1, 2012, pet. denied) (mem. op.) (citing Tex. Fam. Code § 160.308(a), (d) as "allowing acknowledgment to be challenged when genetic testing shows that alleged father is not biological father").

Sec. 160.309. PROCEDURE FOR CHALLENGE

(a) Each signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to challenge the acknowledgment or denial of paternity.

(b) For purposes of a challenge to an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of this state by signing the acknowledgment or denial. The jurisdiction is effective on the filing of the document with the vital statistics unit.

(c) Except for good cause shown, while a proceeding is pending to challenge an acknowledgment of paternity or a denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(d) A proceeding to challenge an acknowledgment of paternity or a denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under Subchapter G.

(e) At the conclusion of a proceeding to challenge an acknowledgment of paternity or a denial of paternity, the court shall order the vital statistics unit to amend the birth record of the child, if appropriate.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 5, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.061, eff. April 2, 2015.

COMMENTS

This section was amended in 2011, and it is applicable to challenges commenced on or after September 1, 2011. Challenges commenced before that date are governed by the former law.

ANNOTATIONS

In re McMillan, 265 S.W.3d 918, 920–21 (Tex. App.—Austin 2008, orig. proceeding). A challenge to a Texas acknowledgment of paternity should be heard in Texas, even if a court in another state would have jurisdiction over a SAPCR or parentage action

Sec. 160.310. RATIFICATION BARRED

A court or administrative agency conducting a judicial or administrative proceeding may not ratify an unchallenged acknowledgment of paternity.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.311. FULL FAITH AND CREDIT

A court of this state shall give full faith and credit to an acknowledgment of paternity or a denial of paternity that is effective in another state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other state.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

Berwick v. Wagner, 509 S.W.3d 411 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). A California court with jurisdiction rendered a judgment adjudicating parentage. The judgment, properly registered in Texas, was entitled to full faith and credit.

Sec. 160.312. FORMS

(a) To facilitate compliance with this subchapter, the vital statistics unit shall prescribe forms for the:

(1) acknowledgment of paternity;

(2) denial of paternity; and

(3) rescission of an acknowledgment or denial of paternity.

(b) A valid acknowledgment of paternity, denial of paternity, or rescission of an acknowledgment or denial of paternity is not affected by a later modification of the prescribed form.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 6, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.062, eff. April 2, 2015.

Sec. 160.313. RELEASE OF INFORMATION

The vital statistics unit may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to the courts and Title IV-D agency of this or another state.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.063, eff. April 2, 2015.

Sec. 160.314. ADOPTION OF RULES

The Title IV-D agency and the executive commissioner of the Health and Human Services Commission may adopt rules to implement this subchapter.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.064, eff. April 2, 2015.

Sec. 160.315. MEMORANDUM OF UNDERSTANDING

(a) The Title IV-D agency and the vital statistics unit shall adopt a memorandum of understanding governing the collection and transfer of information for the voluntary acknowledgment of paternity.

(b) The Title IV-D agency and the vital statistics unit shall review the memorandum semiannually and renew or modify the memorandum as necessary.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.065, eff. April 2, 2015.

SUBCHAPTER E. REGISTRY OF PATERNITY

Sec. 160.401. ESTABLISHMENT OF REGISTRY

A registry of paternity is established in the vital statistics unit.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.066, eff. April 2, 2015.

COMMENTS

In 2001, the Texas Legislature added the paternity registry to Tex. Fam. Code ch. 160, subch. E. The statute is part of the Uniform Parentage Act adopted in 2001. The genesis of the legislation is *Lehr v. Robinson*, 463 U.S. 248 (1983), wherein the Supreme Court upheld the constitutionally of the New York paternity registry, which provided that if an unmarried man wanted to receive notice of an adoption or a petition to terminate parental rights, he must register. Since *Lehr*, thirty-four states have adopted versions of a paternity registry statute. The main variation is the number of days a man has to register to receive notice. In Texas, a man wanting to receive notice of a placement and termination proceeding must register with the vital statistics unit in Austin "not later than the 31st day after the birth of the child." (Tex. Fam. Code § 160.402(a)(2)).

Sec. 160.402. REGISTRATION FOR NOTIFICATION

(a) Except as otherwise provided by Subsection (b), a man who desires to be notified of a proceeding for the adoption of or the termination of parental rights regarding a child that he may have fathered may register with the registry of paternity:

(1) before the birth of the child; or

(2) not later than the 31st day after the date of the birth of the child.

(b) A man is entitled to notice of a proceeding described by Subsection (a) regardless of whether he registers with the registry of paternity if:

(1) a father-child relationship between the man and the child has been established under this chapter or another law; or

(2) the man commences a proceeding to adjudicate his paternity before the court has terminated his parental rights.

(c) A registrant shall promptly notify the registry in a record of any change in the information provided by the registrant. The vital statistics unit shall incorporate all new information received into its records but is not required to affirmatively seek to obtain current information for incorporation in the registry.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.067, eff. April 2, 2015.

ANNOTATIONS

In re Baby Girl S., 407 S.W.3d 904 (Tex. App.—Dallas 2013, no pet.). Although subsection 160.402(a) allows an alleged father thirty-one days after the child is born to register, nothing in chapter 160 or 161 suggests that a party must wait until thirty-one days to file a termination petition.

Sec. 160.403. NOTICE OF PROCEEDING

Except as provided by Sections 161.002(b)(2), (3), and (4) and (f), notice of a proceeding to adopt or to terminate parental rights regarding a child must be given to a registrant who has timely registered with regard to that child. Notice must be given in a manner prescribed for service of process in a civil action.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 2, eff. September 1, 2007.

Sec. 160.404. TERMINATION OF PARENTAL RIGHTS: FAILURE TO REGISTER

The parental rights of a man alleged to be the father of a child may be terminated without notice as provided by Section 161.002 if the man:

(1) did not timely register with the vital statistics unit; and

(2) is not entitled to notice under Section 160.402 or 161.002.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.068, eff. April 2, 2015.

ANNOTATIONS

In re C.M.D., 287 S.W.3d 510 (Tex. App.—Houston [14th Dist.] 2009, no pet.). A licensed child placing agency filed for termination of an unknown father's parental rights relying on his failure to register with the Texas paternity registry. The trail court sua sponte denied the petition stating that the registry was unconstitutional. The agency appealed. The court of appeals reversed and remanded, stating that an "unwed father does not automatically have full constitutional parental rights by virtue of a mere biological relationship."

In re J.R., 381 S.W.3d 619 (Tex. App.—San Antonio 2012, no pet.). Facts are materially different from *In re C.M.D.* Two alleged fathers did not register; however, they were served by publication. Attorney ad litem filed an answer thus waiving any defects in service and the location of each father remained unknown. The termination was granted and upheld.

In re J.M., 387 S.W.3d 865 (Tex. App.—San Antonio 2012, no pet.) distinguishes *In re C.M.D.* stating that in *In re J.M.*, the child was over one year old, the department had been working with the alleged father for over four months, and an attorney was assisting the alleged father. Service or waiver was required.

Sec. 160.411. REQUIRED FORM

The vital statistics unit shall adopt a form for registering with the registry. The form must require the signature of the registrant. The form must state that:

(1) the form is signed under penalty of perjury;

(2) a timely registration entitles the registrant to notice of a proceeding for adoption of the child or for termination of the registrant's parental rights;

(3) a timely registration does not commence a proceeding to establish paternity;

(4) the information disclosed on the form may be used against the registrant to establish paternity;

(5) services to assist in establishing paternity are available to the registrant through the support enforcement agency;

(6) the registrant should also register in another state if the conception or birth of the child occurred in the other state;

(7) information on registries in other states is available from the vital statistics unit; and

(8) procedures exist to rescind the registration of a claim of paternity.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.069, eff. April 2, 2015.

Sec. 160.412. FURNISHING OF INFORMATION; CONFIDENTIALITY

(a) The vital statistics unit is not required to attempt to locate the mother of a child who is the subject of a registration. The vital statistics unit shall send a copy of the notice of the registration to a mother who has provided an address.

(b) Information contained in the registry is confidential and may be released on request only to:

(1) a court or a person designated by the court;

(2) the mother of the child who is the subject of the registration;

(3) an agency authorized by another law to receive the information;

(4) a licensed child-placing agency;

(5) a support enforcement agency;

(6) a party, or the party's attorney of record, to a proceeding under this chapter or a proceeding to adopt or to terminate parental rights regarding a child who is the subject of the registration; and

(7) the registry of paternity in another state.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.070, eff. April 2, 2015.

Sec. 160.413. OFFENSE: UNAUTHORIZED RELEASE OF INFORMATION

(a) A person commits an offense if the person intentionally releases information from the registry of paternity to another person, including an agency, that is not authorized to receive the information under Section 160.412.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.414. RESCISSION OF REGISTRATION

A registrant may rescind his registration at any time by sending to the registry a rescission in a record or another manner authenticated by him and witnessed or notarized.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.415. UNTIMELY REGISTRATION

If a man registers later than the 31st day after the date of the birth of the child, the vital statistics unit shall notify the registrant that the registration was not timely filed.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 627 (H.B. 567), Sec. 1, eff. June 15, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.071, eff. April 2, 2015.

Sec. 160.416. FEES FOR REGISTRY

(a) A fee may not be charged for filing a registration or to rescind a registration.

(b) Except as otherwise provided by Subsection (c), the vital statistics unit may charge a reasonable fee for making a search of the registry and for furnishing a certificate.

(c) A support enforcement agency is not required to pay a fee authorized by Subsection (b).

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.072, eff. April 2, 2015.

Sec. 160.421. SEARCH OF APPROPRIATE REGISTRY

(a) If a father-child relationship has not been established under this chapter, a petitioner for the adoption of or the termination of parental rights regarding the child must obtain a certificate of the results of a search of the registry. The petitioner may request a search of the registry on or after the 32nd day after the date of the birth of the child, and the executive commissioner of the Health and Human Services Commission may not by rule impose a waiting period that must elapse before the vital statistics unit will conduct the requested search.

(b) If the petitioner for the adoption of or the termination of parental rights regarding a child has reason to believe that the conception or birth of the child may have occurred in another state, the petitioner must obtain a certificate of the results of a search of the paternity registry, if any, in the other state.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 627 (H.B. 567), Sec. 2, eff. June 15, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.073, eff. April 2, 2015.

ANNOTATIONS

In re J.P.H., 196 S.W.3d 289, 295 (Tex. App.—Eastland 2006, no pet.). The section's purpose is to provide a potential father the opportunity to protect his rights by receiving notice before termination or adoption. Other persons, such as the mother, lack standing to raise a challenge under this section.

Sec. 160.422. CERTIFICATE OF SEARCH OF REGISTRY

(a) The vital statistics unit shall furnish a certificate of the results of a search of the registry on request by an individual, a court, or an agency listed in Section 160.412(b).

(b) The certificate of the results of a search must be signed on behalf of the unit and state that:

(1) a search has been made of the registry; and

(2) a registration containing the information required to identify the registrant:

(A) has been found and is attached to the certificate; or

(B) has not been found.

(c) A petitioner must file the certificate of the results of a search of the registry with the court before a proceeding for the adoption of or termination of parental rights regarding a child may be concluded.

(d) A search of the registry is not required if a parent-child relationship exists between a man and the child, as provided by Section 160.201(b), and that man:

(1) has been served with citation of the proceeding for termination of the parent-child relationship; or

(2) has signed a relinquishment of parental rights with regard to the child.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 3, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.074, eff. April 2, 2015.

ANNOTATIONS

In re J.P.H., 196 S.W.3d 289, 295 (Tex. App.—Eastland 2006, no pet.). The section's purpose is to provide a potential father the opportunity to protect his rights by receiving notice before termination or adoption. Other persons, such as the mother, lack standing to raise a challenge under this section.

Sec. 160.423. ADMISSIBILITY OF CERTIFICATE

A certificate of the results of a search of the registry in this state or of a paternity registry in another state is admissible in a proceeding for the adoption of or the termination of parental rights regarding a child and, if relevant, in other legal proceedings.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

SUBCHAPTER F. GENETIC TESTING

Sec. 160.501. APPLICATION OF SUBCHAPTER

This subchapter governs genetic testing of an individual to determine parentage, regardless of whether the individual:

(1) voluntarily submits to testing; or

(2) is tested under an order of a court or a support enforcement agency.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.502. ORDER FOR TESTING

(a) Except as otherwise provided by this subchapter and by Subchapter G, a court shall order a child and other designated individuals to submit to genetic testing if the request is made by a party to a proceeding to determine parentage.

(b) If a request for genetic testing of a child is made before the birth of the child, the court or support enforcement agency may not order in utero testing.

(c) If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

In re C.B.B., No. 12-12-00106-CV, 2013 WL 1046323 (Tex. App.—Tyler Mar. 13, 2013, pet. denied) (mem. op.). A ruling on a request for genetic testing is not a ruling on whether the presumption of paternity has been rebutted. Consequently, it is not a decision on the merits and is vitiated if the underlying suit is nonsuited.

In re Rodriguez, 248 S.W.3d 444, 450–51 (Tex. App.—Dallas 2008, no pet.). A party must be entitled to maintain a proceeding to adjudicate parentage as set out in Tex. Fam. Code ch. 160, subch. G, before a trial court can order genetic testing to determine parentage. A trial court may not grant an order for genetic testing when requested by an individual who has not made a prima facie showing that he is entitled to bring a proceeding to adjudicate parentage or disprove the father-child relationship.

Sec. 160.503. REQUIREMENTS FOR GENETIC TESTING

(a) Genetic testing must be of a type reasonably relied on by experts in the field of genetic testing. The testing must be performed in a testing laboratory accredited by:

(1) the American Association of Blood Banks, or a successor to its functions;

(2) the American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or

(3) an accrediting body designated by the federal secretary of health and human services.

(b) A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing is not required to be of the same kind for each individual undergoing genetic testing.

(c) Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in the calculation of the probability of paternity of the individual. If there is disagreement as to the testing laboratory's choice:

(1) the objecting individual may require the testing laboratory, not later than the 30th day after the date of receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory;

(2) the individual objecting to the testing laboratory's initial choice shall:

(A) if the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(B) engage another testing laboratory to perform the calculations; and

(3) the testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate and, if available, shall calculate the frequencies using statistics for any other ethnic or racial group requested.

(d) If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child under Section 160.505, an individual who has been tested may be required to submit to additional genetic testing.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.504. REPORT OF GENETIC TESTING

(a) A report of the results of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this subchapter is self-authenticating.

(b) Documentation from the testing laboratory is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony if the documentation includes:

(1) the name and photograph of each individual whose specimens have been taken;

(2) the name of each individual who collected the specimens;

(3) the places in which the specimens were collected and the date of each collection;

(4) the name of each individual who received the specimens in the testing laboratory; and

(5) the dates the specimens were received.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

COMMENTS

For probate and estates practices, Tex. Est. Code § 204.101 provides that a report that complies with Tex. Fam. Code § 160.504 is admissible in a proceeding to declare heirship as evidence of the truth of the facts asserted in the report.

Sec. 160.505. GENETIC TESTING RESULTS; REBUTTAL

(a) A man is rebuttably identified as the father of a child under this chapter if the genetic testing complies with this subchapter and the results disclose:

(1) that the man has at least a 99 percent probability of paternity, using a prior probability of 0.5, as calculated by using the combined paternity index obtained in the testing; and

(2) a combined paternity index of at least 100 to 1.

(b) A man identified as the father of a child under Subsection (a) may rebut the genetic testing results only by producing other genetic testing satisfying the requirements of this subchapter that:

(1) excludes the man as a genetic father of the child; or

(2) identifies another man as the possible father of the child.

(c) Except as otherwise provided by Section 160.510, if more than one man is identified by genetic testing as the possible father of the child, the court shall order each man to submit to further genetic testing to identify the genetic father.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

COMMENTS

For probate and estates practices, Tex. Est. Code § 204.102 provides that the presumptions under Tex. Fam. Code § 160.505 apply to the results of genetic testing and that the presumptions may be rebutted as provided by that section. *See also In re Estate of Wallace*, No. 03-10-00555-CV, 2013 WL 4817740 (Tex. App.—Austin Aug. 28, 2013, pet. denied) (mem. op.).

Sec. 160.506. COSTS OF GENETIC TESTING

(a) Subject to the assessment of costs under Subchapter G, the cost of initial genetic testing must be advanced:

(1) by a support enforcement agency, if the agency is providing services in the proceeding;

(2) by the individual who made the request;

(3) as agreed by the parties; or

(4) as ordered by the court.

(b) In cases in which the cost of genetic testing is advanced by the support enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.507. ADDITIONAL GENETIC TESTING

The court or the support enforcement agency shall order additional genetic testing on the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under Section 160.505, the court or agency may not order additional testing unless the party provides advance payment for the testing.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.508. GENETIC TESTING WHEN ALL INDIVIDUALS NOT AVAILABLE

(a) Subject to Subsection (b), if a genetic testing specimen for good cause and under circumstances the court considers to be just is not available from a man who may be the father of a child, a court may order the following individuals to submit specimens for genetic testing:

(1) the parents of the man;

(2) any brothers or sisters of the man;

(3) any other children of the man and their mothers; and

(4) other relatives of the man necessary to complete genetic testing.

(b) A court may not render an order under this section unless the court finds that the need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.509. DECEASED INDIVIDUAL

For good cause shown, the court may order genetic testing of a deceased individual.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.510. IDENTICAL BROTHERS

(a) The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(b) If each brother satisfies the requirements of Section 160.505 for being the identified father of the child and there is not another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.511. OFFENSE: UNAUTHORIZED RELEASE OF SPECIMEN

(a) A person commits an offense if the person intentionally releases an identifiable specimen of another person for any purpose not relevant to the parentage proceeding and without a court order or the written permission of the person who furnished the specimen.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.512. OFFENSE: FALSIFICATION OF SPECIMEN

(a) A person commits an offense if the person alters, destroys, conceals, fabricates, or falsifies genetic evidence in a proceeding to adjudicate parentage, including inducing another person to provide a specimen with the intent to affect the outcome of the proceeding.

(b) An offense under this section is a felony of the third degree.

(c) An order excluding a man as the biological father of a child based on genetic evidence shown to be altered, fabricated, or falsified is void and unenforceable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 7, eff. September 1, 2011.

SUBCHAPTER G. PROCEEDING TO ADJUDICATE PARENTAGE

Sec. 160.601. PROCEEDING AUTHORIZED; RULES OF PROCEDURE

(a) A civil proceeding may be maintained to adjudicate the parentage of a child.

(b) The proceeding is governed by the Texas Rules of Civil Procedure, except as provided by Chapter 233.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 23, eff. June 19, 2009.

Sec. 160.602. STANDING TO MAINTAIN PROCEEDING

(a) Subject to Subchapter D and Sections 160.607 and 160.609 and except as provided by Subsection (b), a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the mother of the child;

(3) a man whose paternity of the child is to be adjudicated;

(4) the support enforcement agency or another government agency authorized by other law;

(5) an authorized adoption agency or licensed child-placing agency;

(6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, is incapacitated, or is a minor;

(7) a person related within the second degree by consanguinity to the mother of the child, if the mother is deceased; or

(8) a person who is an intended parent.

(b) After the date a child having no presumed, acknowledged, or adjudicated father becomes an adult, a proceeding to adjudicate the parentage of the adult child may only be maintained by the adult child.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by Acts 2003, 78th Leg., ch. 457, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1248, Sec. 3, eff. Sept. 1, 2003.

ANNOTATIONS

In re Sandoval, No. 04-15-00244-CV, 2016 WL 353010 (Tex. App.—San Antonio 2015, orig. proceeding) (mem. op.). Former boyfriend of adoptive mother initiated suit to establish paternity of her two children in 2015. In 2014, the boyfriend obtained an "Order Granting Change of Identity" finding that although born a female, he is a male. The boyfriend asserted that he had standing to pursue paternity adjudication under Tex. Fam. Code § 102.003(a)(8). Mother filed plea to the jurisdiction which was denied. Mandamus followed. In reversing the trial court, the court of appeals cited Tex. Fam. Code § 160.602(a)(3) as the basis for denying the request of the boyfriend. The boyfriend did not meet any category to assert standing because his suit predated his change of identity. The court noted that there was no dispute that the boyfriend was not the biological father, nor does he "qualify for statutory standing as a presumed father, or meet the requirements of an acknowledged father."

Gribble v. Layton, 389 S.W.3d 882, 887–88 (Tex. App.—Houston [14th Dist.] 2012, pet. denied). Although subsection 160.602(b) states that a parentage suit after a child reaches majority may be maintained only by the adult child, this section does not prohibit a suit filed by the court-appointed guardian of a mentally disabled adult child.

In re H.C.S., 219 S.W.3d 33, 34 (Tex. App.—San Antonio 2006, no pet.). A sperm donor who did not sign and file an acknowledgment of paternity does not have standing to pursue a suit to determine paternity of the child born through assisted reproduction.

In re K.I.A., 205 S.W.3d 14 (Tex. App.—Eastland 2006, no pet.). The trial court had jurisdiction to adjudicate the parentage of the child, even when DNA results indicated that the petitioner was not the father.

In re Sullivan, 157 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding). An unmarried man who intended to assume an active role as father of a child conceived by means of assisted reproduction has standing to maintain a parentage proceeding.

Sec. 160.603. NECESSARY PARTIES TO PROCEEDING

The following individuals must be joined as parties in a proceeding to adjudicate parentage:

(1) the mother of the child; and

(2) a man whose paternity of the child is to be adjudicated.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

In re B.B.R., 188 S.W.3d 341, 344 (Tex. App.—Fort Worth 2006, no pet.). Although not specifically included in the statutory list, an adoption agency that exercised control over possession of the child was a necessary party.

Sec. 160.6035. CONTENTS OF PETITION; STATEMENT RELATING TO CERTAIN PROTECTIVE ORDERS REQUIRED

(a) The petition in a proceeding to adjudicate parentage must include a statement as to whether, in regard to a party to the proceeding or a child of a party to the proceeding:

(1) there is in effect:

(A) a protective order under Title 4;

(B) a protective order under **Subchapter A,** Chapter 7B ~~7A~~, Code of Criminal Procedure; or

(C) an order for emergency protection under Article 17.292, Code of Criminal Procedure; or

(2) an application for an order described by Subdivision (1) is pending.

(b) The petitioner shall attach a copy of each order described by Subsection (a)(1) in which a party to the proceeding or a child of a party to the proceeding was the applicant or victim of the conduct alleged in the application or order and the other party was the respondent or defendant of an action regarding the conduct alleged in the application or order without regard to the date of the order. If a copy of the order is not available at the time of filing, the petition must state that a copy of the order will be filed with the court before any hearing.

(c) Notwithstanding any other provision of this section, if the Title IV-D agency files a petition in a proceeding to adjudicate parentage, the agency is not required to:

(1) include in the petition the statement described by Subsection (a); or

(2) attach copies of the documentation described by Subsection (b).

Added by Acts 2017, 85th Leg., R.S., Ch. 885 (H.B. 3052), Sec. 7, eff. Sept. 1, 2017. Amended by Acts 2019, 86th Leg., H.B. 4173, Sec. 2.37, eff. Jan. 1, 2021.

Sec. 160.604. PERSONAL JURISDICTION

(a) An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.

(b) A court of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual or the guardian or conservator of the individual if the conditions in Section 159.201 are satisfied.

(c) Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

Frazer v. Hall, No. 01-11-00505-CV, 2012 WL 2159271 (Tex. App.—Houston [1st Dist.] June 14, 2012, no pet.) (mem. op.). A long-arm statute allows a court to exercise personal jurisdiction under certain circumstances including when the parties "engaged in sexual intercourse in the State of Texas and the child may have been conceived by the act of intercourse." Because the statute is permissive rather than mandatory, the trial court was within its discretion to decline jurisdiction.

Dickerson v. Doyle, 170 S.W.3d 713, 717 (Tex. App.—El Paso 2005, no pet.). Even if a Texas court has both subject matter jurisdiction and personal jurisdiction to determine parentage, it may decline to exercise its jurisdiction if it determines that it is an inconvenient forum and that a court of another state is a more appropriate forum.

Sec. 160.605. VENUE

Venue for a proceeding to adjudicate parentage is in the county of this state in which:

(1) the child resides or is found;

(2) the respondent resides or is found if the child does not reside in this state; or

(3) a proceeding for probate or administration of the presumed or alleged father's estate has been commenced.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.606. NO TIME LIMITATION: CHILD HAVING NO PRESUMED, ACKNOWLEDGED, OR ADJUDICATED FATHER

A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, including after the date:

(1) the child becomes an adult; or

(2) an earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

In re S.C.L., 175 S.W.3d 555, 560 (Tex. App.—Dallas 2005, no pet.). Had there been no presumptive father, an alleged biological father would not be precluded from establishing a parent-child relationship. Nevertheless, because a presumed father whose rights were terminated remains a presumptive father, the current law leaves an alleged biological father with no greater ability to establish a parent-child relationship or be appointed as conservator after the running of the four-year statute of limitations than any stranger to the relationship.

Sec. 160.607. TIME LIMITATION: CHILD HAVING PRESUMED FATHER

(a) Except as otherwise provided by Subsection (b), a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father shall be commenced not later than the fourth anniversary of the date of the birth of the child.

(b) A proceeding seeking to adjudicate the parentage of a child having a presumed father may be maintained at any time if the court determines that:

(1) the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception; or

(2) the presumed father was precluded from commencing a proceeding to adjudicate the parentage of the child before the expiration of the time prescribed by Subsection (a) because of the mistaken belief that he was the child's biological father based on misrepresentations that led him to that conclusion.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by Acts 2003, 78th Leg., ch. 1248, Sec. 4, eff. Sept. 1, 2003. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 8, eff. September 1, 2011.

COMMENTS

This section was amended in 2011, and it is applicable to proceedings to adjudicate parentage filed on or after September 1, 2011. Proceedings filed before that date are governed by the former law.

ANNOTATIONS

In re Young, No. 05-15-00024-CV, 2015 WL 1568835 (Tex. App.—Dallas 2015, no pet.). In 2011, the parents divorced and the decree named mother and father joint conservators of two children. In 2013, a man filed a petition to adjudicate paternity of one child. In 2014, the trial court ordered genetic testing. Based on Tex. Fam. Code § 160.607(b) statute of limitations, the court of appeals reversed the order for genetic testing. Without sufficient evidence to meet the exception in subsection 160.607(b), the court cannot order genetic testing. The court further stated that improperly ordered genetic testing presents a danger to the family unit "for which there is no adequate remedy at law and mandamus relief is appropriate."

Quiroz v. Gray, 441 S.W.3d 588 (Tex. App.—El Paso 2014, no pet.). Biological father brought an action to establish his paternity in 2010 of a child born in 2003, unaware that the child had a presumed father. The mother and her former husband contested the biological father's right to an adjudication of paternity based on the four-year statute of limitations to challenge. The court denied former husband's intervention and denied mother's request to dismiss based on Tex. Fam. Code § 160.607. The court adjudicated the biological father as the child's parent based on the following uncontroverted evidence: (1) genetic testing determining he was 99.99 percent the genetic father; (2) his relationship with the child including visitation and financial support; and (3) applying the theory of equitable estoppel to deny mother's objections.

In re K.M.T., 415 S.W.3d 573 (Tex. App.—Texarkana 2013, no pet.). The plain language of this section is unambiguous: Any paternity suit filed more than four years after the child's birth is procedurally barred. The party seeking to avoid limitations bears the burden of proving a provision that would toll the statute of limitations.

In re Ngo, No. 05-13-00382-CV, 2013 WL 3974136 (Tex. App.—Dallas Aug. 2, 2013, orig. proceeding) (mem. op.). Mandamus is available since there is no adequate remedy by appeal when a trial court fails to abide by the statute of limitations set forth in this section.

In re Rodriguez, 248 S.W.3d 444, 451 (Tex. App.—Dallas 2008, no pet.). A trial court cannot grant an order for genetic testing when requested by an individual who has not made a prima facie showing that he is entitled to bring a proceeding to adjudicate parentage or disprove the father-child relationship. A court cannot order genetic testing if the proceeding to adjudicate parentage is barred as a matter of law by the four-year limitations period and the party requesting the testing produces no evidence of the exception found in subsection 160.607(b). A trial court abuses its discretion when a child's paternity has been legally established and it orders genetic testing before a parentage determination has been set aside.

In re D.K.M., 242 S.W.3d 863, 865 (Tex. App.—Austin 2007, no pet.). This statute of limitations is an affirmative defense that should be raised through a motion for summary judgment, not through a motion to dismiss or a plea to the jurisdiction.

In re S.C.L., 175 S.W.3d 555, 558 (Tex. App.—Dallas 2005, no pet.). Because the U.S. Supreme Court has determined that a biological father's right to establish parentage is not constitutionally protected, and that statutes limiting that right are a matter of legislative policy not constitutional law, an alleged biological father's federal due process rights are not violated by the four-year statute of limitations.

Sec. 160.608. AUTHORITY TO DENY MOTION FOR GENETIC TESTING

(a) In a proceeding to adjudicate parentage, a court may deny a motion for an order for the genetic testing of the mother, the child, and the presumed father if the court determines that:

(1) the conduct of the mother or the presumed father estops that party from denying parentage; and

(2) it would be inequitable to disprove the father-child relationship between the child and the presumed father.

(b) In determining whether to deny a motion for an order for genetic testing under this section, the court shall consider the best interest of the child, including the following factors:

(1) the length of time between the date of the proceeding to adjudicate parentage and the date the presumed father was placed on notice that he might not be the genetic father;

(2) the length of time during which the presumed father has assumed the role of father of the child;

(3) the facts surrounding the presumed father's discovery of his possible nonpaternity;

(4) the nature of the relationship between the child and the presumed father;

(5) the age of the child;

(6) any harm that may result to the child if presumed paternity is successfully disproved;

(7) the nature of the relationship between the child and the alleged father;

(8) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and

(9) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed father or the chance of other harm to the child.

(c) In a proceeding involving the application of this section, a child who is a minor or is incapacitated must be represented by an amicus attorney or attorney ad litem.

(d) A denial of a motion for an order for genetic testing must be based on clear and convincing evidence.

(e) If the court denies a motion for an order for genetic testing, the court shall issue an order adjudicating the presumed father to be the father of the child.

(f) This section applies to a proceeding to challenge an acknowledgment of paternity or a denial of paternity as provided by Section 160.309(d).

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by Acts 2003, 78th Leg., ch. 1248, Sec. 5, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 17, eff. September 1, 2005. Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 9, eff. September 1, 2011.

COMMENTS

This section was amended in 2011, and it is applicable to proceedings to adjudicate parentage filed on or after September 1, 2011. Proceedings filed before that date are governed by the former law.

ANNOTATIONS

Stamper v. Knox, 254 S.W.3d 537, 544–45 (Tex. App.—Houston [1st Dist.] 2008, no pet.). The theory that underlies subsection 160.608(a) is the common-law theory of paternity by estoppel. While consideration of the factors set out in

subsection 160.608(b) is not mandatory to determine the best interest of the child in a suit where a person whose paternity has already been disproved by genetic testing seeks to estop another from denying his paternity, it is relevant to establish whether it is in the best interest of the child for the nonbiological father to be adjudicated her father.

Hausman v. Hausman, 199 S.W.3d 38, 41–43 (Tex. App.—San Antonio 2006, no pet.). The only trial court action that section 160.608 addresses is whether the trial court can deny a motion requesting genetic testing. Section 160.608 does not address the trial court's authority regarding orders determining parentage. Nothing in section 160.608 or any other provision of the Family Code appears to broadly divest a trial court of its authority to apply the principles of equitable estoppel in paternity cases. Nothing in subsection 160.608(d) requires a heightened burden to be applied when a trial court is exercising its equitable jurisdiction to determine whether a mother is estopped from denying a presumed father's paternity.

In re Shockley, 123 S.W.3d 642, 651–52 (Tex. App.—El Paso 2003, no pet.). Estoppel in paternity actions is merely the legal determination that because of a person's conduct, that person, regardless of biological status, will not be permitted to litigate parentage. It operates both offensively and defensively. The application of estoppel in paternity actions is aimed at achieving fairness as between the parents by holding them, both mother and father, to their prior conduct regarding the paternity of the child. Estoppel is based on the public policy that children should be secure in knowing who their parents are. If a person has acted as the parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father she has known all her life is not in fact her father. In determining whether the doctrine should be applied to a particular case, the child's best interests are of paramount concern.

Sec. 160.609. TIME LIMITATION: CHILD HAVING ACKNOWLEDGED OR ADJUDICATED FATHER

(a) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity may commence a proceeding under this chapter to challenge the paternity of the child only within the time allowed under Section 160.308.

(b) If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is not a signatory to the acknowledgment or a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than the fourth anniversary of the effective date of the acknowledgment or adjudication.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1221 (S.B. 502), Sec. 10, eff. September 1, 2011.

COMMENTS

This section was amended in 2011, and it is applicable to proceedings to adjudicate parentage filed on or after September 1, 2011. Proceedings filed before that date are governed by the former law.

ANNOTATIONS

In re R.A.H., 130 S.W.3d 68, 69 (Tex. 2004) (per curiam). A docket sheet entry indicated that paternity was admitted, but no order was signed adjudicating paternity until a month later. The date the judgment was signed prevails over a conflicting docket sheet entry.

In re K.B.S., 172 S.W.3d 152, 154–55 (Tex. App.—Beaumont 2005, pet. denied). "Adjudicated father" includes adoptive fathers.

Sec. 160.610. JOINDER OF PROCEEDINGS

(a) Except as provided by Subsection (b), a proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, possession of or access to a child, child support, divorce, annulment, or probate or administration of an estate or another appropriate proceeding.

(b) A respondent may not join a proceeding described by Subsection (a) with a proceeding to adjudicate parentage brought under Chapter 159.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.611. PROCEEDINGS BEFORE BIRTH

(a) A proceeding to determine parentage commenced before the birth of the child may not be concluded until after the birth of the child.

(b) In a proceeding described by Subsection (a), the following actions may be taken before the birth of the child:

(1) service of process;

(2) discovery; and

(3) except as prohibited by Section 160.502, collection of specimens for genetic testing.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.612. CHILD AS PARTY; REPRESENTATION

(a) A minor child is a permissible party, but is not a necessary party to a proceeding under this subchapter.

(b) The court shall appoint an amicus attorney or attorney ad litem to represent a child who is a minor or is incapacitated if the child is a party or the court finds that the interests of the child are not adequately represented.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 18, eff. September 1, 2005.

Sec. 160.621. ADMISSIBILITY OF RESULTS OF GENETIC TESTING; EXPENSES

(a) Except as otherwise provided by Subsection (c), a report of a genetic testing expert is admissible as evidence of the truth of the facts asserted in the report. The admissibility of the report is not affected by whether the testing was performed:

(1) voluntarily or under an order of the court or a support enforcement agency; or

(2) before or after the date of commencement of the proceeding.

(b) A party objecting to the results of genetic testing may call one or more genetic testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

(c) If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

(1) with the consent of both the mother and the presumed, acknowledged, or adjudicated father; or

(2) under an order of the court under Section 160.502.

(d) Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child that are furnished to the adverse party on or before the 10th day before the date of a hearing are admissible to establish:

(1) the amount of the charges billed; and

(2) that the charges were reasonable, necessary, and customary.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

Miles v. Peacock, 229 S.W.3d 384, 388 (Tex. App.—Houston [1st Dist.] 2007, no pet.). A party's request for paternity testing in his pleadings can be considered consent to paternity testing, and can make the paternity test results admissible under subsection 160.621(c)(1).

In re Attorney General of Texas, 195 S.W.3d 264, 266 n.2 (Tex. App.—San Antonio 2006, orig. proceeding). Genetic test results were inadmissible under subsection 160.621(c) when the mother did not consent to genetic testing, and the trial court did not order genetic testing.

Sec. 160.622. CONSEQUENCES OF DECLINING GENETIC TESTING

(a) An order for genetic testing is enforceable by contempt.

(b) A court may adjudicate parentage contrary to the position of an individual whose paternity is being determined on the grounds that the individual declines to submit to genetic testing as ordered by the court.

(c) Genetic testing of the mother of a child is not a prerequisite to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and each man whose paternity is being adjudicated.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.623. ADMISSION OF PATERNITY AUTHORIZED

(a) A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

(b) If the court finds that the admission of paternity satisfies the requirements of this section and that there is no reason to question the admission, the court shall render an order adjudicating the child to be the child of the man admitting paternity.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.624. TEMPORARY ORDER

(a) In a proceeding under this subchapter, the court shall render a temporary order for child support for a child if the order is appropriate and the individual ordered to pay child support:

(1) is a presumed father of the child;

(2) is petitioning to have his paternity adjudicated;

(3) is identified as the father through genetic testing under Section 160.505;

(4) is an alleged father who has declined to submit to genetic testing;

(5) is shown by clear and convincing evidence to be the father of the child; or

(6) is the mother of the child.

(b) A temporary order may include provisions for the possession of or access to the child as provided by other laws of this state.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.631. RULES FOR ADJUDICATION OF PATERNITY

(a) The court shall apply the rules stated in this section to adjudicate the paternity of a child.

(b) The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.

(c) Unless the results of genetic testing are admitted to rebut other results of genetic testing, the man identified as the father of a child under Section 160.505 shall be adjudicated as being the father of the child.

(d) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated as not being the father of the child.

(e) If the court finds that genetic testing under Section 160.505 does not identify or exclude a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of paternity.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

In re X.C.B., No. 14-08-00851-CV, 2009 WL 2370911 (Tex. App.—Houston [14th Dist.] July 30, 2009, pet. denied) (memo. op.). An alleged father argued that he considered himself to be the common-law husband of the children's mother, which entitled him to a presumption of paternity. However, the presumption of paternity can be rebutted by genetic testing excluding the husband as the father of the children pursuant to Tex. Fam. Code § 160.631. Because the genetic tests excluded him as the father, and he failed to produce other genetic testing showing him to be the father, the presumption under Tex. Fam. Code § 160.204 was rebutted.

Hausman v. Hausman, 199 S.W.3d 38, 43 (Tex. App.—San Antonio 2006, no pet.). Subsection 160.631(d) does not limit a court's powers to establish a parent-child relationship under the doctrine of paternity by estoppel or equitable estoppel: The trial court did adjudicate the man as not being the biological father of the child, as required by subsection 160.631(d), based on the results of genetic testing. The trial court's order establishing a parent-child relationship between the man and the child was based on its equitable jurisdiction or authority to find that the mother was estopped from denying the man's paternity. *See also Stamper v. Knox*, 254 S.W.3d 537, 543 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (court can establish paternity by estoppel in spite of finding that man is not child's biological father).

Sec. 160.632. JURY PROHIBITED

The court shall adjudicate paternity of a child without a jury.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.633. HEARINGS; INSPECTION OF RECORDS

(a) A proceeding under this subchapter is open to the public as in other civil cases.

(b) Papers and records in a proceeding under this subchapter are available for public inspection.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by Acts 2003, 78th Leg., ch. 610, Sec. 11, eff. Sept. 1, 2003.

Sec. 160.634. ORDER ON DEFAULT

The court shall issue an order adjudicating the paternity of a man who:

(1) after service of process, is in default; and

(2) is found by the court to be the father of a child.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

ANNOTATIONS

In re S.B.S., 282 S.W.3d 711, 715 (Tex. App.—Amarillo 2009, pet. denied). The phrase "service of process" is not specifically defined by the Family Code. However, in the context of a child support review process proceeding, section 233.0271 indicates that delivery of the petition is sufficient to meet a party's entitlement to service. Therefore, there is no conflict between section 160.634's requirement of service of process and section 233.0271's identification of what constitutes sufficient service for a child support review process proceeding.

Sec. 160.635. DISMISSAL FOR WANT OF PROSECUTION

The court may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.636. ORDER ADJUDICATING PARENTAGE; COSTS

(a) The court shall render an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

(b) An order adjudicating parentage must identify the child by name and date of birth.

(c) Except as otherwise provided by Subsection (d), the court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this subchapter. Attorney's fees awarded by the court may be paid directly to the attorney. An attorney who is awarded attorney's fees may enforce the order in the attorney's own name.

(d) The court may not assess fees, costs, or expenses against the support enforcement agency of this state or another state, except as provided by other law.

(e) On request of a party and for good cause shown, the court may order that the name of the child be changed.

(f) If the order of the court is at variance with the child's birth certificate, the court shall order the vital statistics unit to issue an amended birth record.

(g) On a finding of parentage, the court may order retroactive child support as provided by Chapter 154 and, on a proper showing, order a party to pay an equitable portion of all of the prenatal and postnatal health care expenses of the mother and the child.

(h) In rendering an order for retroactive child support under this section, the court shall use the child support guidelines provided by Chapter 154, together with any relevant factors.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.075, eff. April 2, 2015.

ANNOTATIONS

Berwick v. Wagner, 509 S.W.3d 411 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). *See also Berwick v. Wagner*, 336 S.W.3d 805 (Tex. App.—Houston [1st Dist.] 2011, pet. denied 2011). Berwick and Wagner, both men, were in a domestic relationship together from 1994 through 2008. They married in Canada, registered as domestic partners in California in 2005, and lived together in Texas from 1997–2008. In 2005 the couple used a gestational surrogate in California to carry a child for them; Berwick's sperm was used to create the embryos. Parentage was established in California for both Berwick and Wagner. In 2008, the relationship ended. Wagner, the nonbiological parent filed suit for conservatorship and standing as a parent to seek custody. There were two separate proceedings. In one, Wagner requested the trial court register the California parentage judgment as a "child custody determination." Berwick contested the registration. Trial court found it to be a "child custody determination" and ordered the California parentage registered in Texas. Berwick appealed. The court of appeals upheld the trial court decision holding the Uniform Child Custody Jurisdiction and Enforcement Act required recognition of the California judgment, and the Texas Supreme Court refused to review the case.

In re B.B.R., 188 S.W.3d 341, 345 (Tex. App.—Fort Worth 2006, no pet.). Although this section does exclude governmental agencies from having attorney's fees assessed against them, the mere fact that governmental agencies are excluded does not establish that the section allows assessment of attorney's fees against parents alone. Under section 160.002, the Family Code's general provision for assessment of attorney's fees in all SAPCRs, nonparents involved in the suit are equally subject to having attorney's fees assessed against them.

In re M.C.F., 121 S.W.3d 891, 894–95 (Tex. App.—Fort Worth 2003, no pet.). Under chapter 45, Change of Name, a court may order that the name of a child be changed if the change is in the best interest of the child. However, in a parentage action, subsection 160.636(e) requires good cause to be shown for the court to order a name change. Section 160.002 contains a conflicts provision requiring that this subchapter will control if there is a conflict with another provision of the Family Code. Thus, a party is required to show good cause to justify a name change. However, because the Family Code instructs that the best interest of the child is always a factor in any SAPCR, the party should also show how the change of name would be in the child's best interest. Under this section, it is the child's best interest, and not the interest of the biological father, that must be served by legitimation. While a name change in connection with a paternity action under chapter 160 is not the same as a name change under chapter 45, the chapter 45 cases may be looked to in determining a child's best interest regarding name change in a paternity action.

Sec. 160.637. BINDING EFFECT OF DETERMINATION OF PARENTAGE

(a) Except as otherwise provided by Subsection (b) or Section 160.316, a determination of parentage is binding on:

(1) all signatories to an acknowledgment or denial of paternity as provided by Subchapter D; and

(2) all parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of Section 159.201.

(b) A child is not bound by a determination of parentage under this chapter unless:

(1) the determination was based on an unrescinded acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;

(2) the adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

(3) the child was a party or was represented in the proceeding determining parentage by an attorney ad litem.

(c) In a proceeding to dissolve a marriage, the court is considered to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of Section 159.201, and the final order:

(1) expressly identifies the child as "a child of the marriage" or "issue of the marriage" or uses similar words indicating that the husband is the father of the child; or

(2) provides for the payment of child support for the child by the husband unless paternity is specifically disclaimed in the order.

(d) Except as otherwise provided by Subsection (b), a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

(e) A party to an adjudication of paternity may challenge the adjudication only under the laws of this state relating to appeal, the vacating of judgments, or other judicial review.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

COMMENTS

There is no section 160.316 in the Family Code. The original bill refers to a section 160.316, which was intended to be captioned "Suit to Contest Voluntary Statement of Paternity."

ANNOTATIONS

In re D.V., No. 06-16-00065-CV, 2017 WL 1018606, at *8 (Tex. App.—Texarkana Mar. 16, 2017, pet. denied) (mem. op.). After being adjudicated as the child's father through a "Default Order Establishing the Parent-Child Relationship" but before the termination proceeding, father requested and was denied a DNA test. However, at no time after the adjudication order did father "file a motion for new trial, challenge the order on appeal, file a bill of review, or otherwise challenge the orders under the laws of this state." Thus the appellate court held that because father had not properly challenged the adjudicated fact of biological paternity, he was therefore "barred from collaterally attacking it during [the] termination proceeding."

In re J.A.C., No. 02-15-00554-CV, 2016 WL 3854215 (Tex. App.—Dallas July 13, 2016) (mem. op.). Fourteen-year-old twins sought to terminate the parent-child relationship with their acknowledged and adjudicated father. The trial court found that the children did not have standing to collaterally attack the father's paternity. The appellate court held that (1) the father's signing of the children's birth certificates did not satisfy the requirements of an acknowledgment of paternity under Family Code chapter 160, subchapter D or were consistent with the results of genetic testing (the two factors under section 160.637 for determination of parentage being binding on a child); (2) the four-year time limitation to challenge an acknowledgment of paternity only applies when the acknowledgement satisfies subchapter D; (3) the adjudications of parentage in the divorce decrees do not state that the court's finding was based on genetic testing consistent with paternity; and (4) the children were not represented by an attorney ad litem and were not parties to the parentage proceedings. The appellate court held therefore that the children were not bound to the determination of parentage and had standing to contest the determination of parentage.

In re Office of Attorney General of Texas, 193 S.W.3d 690, 692–93 (Tex. App.—Beaumont 2006, orig. proceeding) (per curiam). Generally, subject to several exceptions, a party to a court proceeding to determine parentage of a child is bound by the court's findings. Agreed orders are accorded the same degree of finality and binding force as a final judgment rendered at the conclusion of an adversary proceeding. A party to an adjudication of paternity may challenge the adjudication only under the laws of this state relating to appeal, the vacating of judgments or other judicial review. A lie about a child's parentage is intrinsic, not extrinsic, fraud, and only extrinsic fraud can be the basis of a bill of review.

In re R.J.P., 179 S.W.3d 181, 185–86 (Tex. App.—Houston [14th Dist.] 2005, no pet.). An adjudicated father did not file any motions with the trial court after the adjudication, did not challenge the order on appeal, and did not file a bill of

review. The doctrine of collateral estoppel barred the adjudicated father from relitigating the finding tPhat he is the biological father of the child.

SUBCHAPTER H. CHILD OF ASSISTED REPRODUCTION

Sec. 160.701. SCOPE OF SUBCHAPTER

This subchapter applies only to a child conceived by means of assisted reproduction.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

COMMENTS

Advanced medical technology involving assisted reproductive technology creates challenges for the law to address. Parentage of parties involved and the disposition of embryos created are addressed in this chapter. In many instances, the issues involve interstate or even international situations.

PRACTICE TIPS

The practitioner should consult an expert in the field of reproductive endocrinology for assistance with medical terminology. For information on ethical considerations, the practitioner should review the ABA Model Act Governing Assisted Reproductive Technology. Although the Model Act is not widely adopted among the states, it provides a basis for understanding the issues.

RESOURCES

Uniform Parentage Act (UPA) (2000), 9B U.L.A. 295 (West 2001).

Sonia Bychkov Green, *Interstate Intercourse: How Modern Assisted Reproductive Technologies Challenge the Traditional Realm of Conflicts of Laws*, 24 WIS. J.L. GENDER & SOC'Y 25 (2009).

Emily Stark, *Born To No Mother: In Re Roberto D.B. and Equal Protection for Gestational Surrogates Rebutting Maternity*, 16 Am. U.J. Gender, Soc. Policy & L. 238 (2007).

Sec. 160.702. PARENTAL STATUS OF DONOR

A donor is not a parent of a child conceived by means of assisted reproduction.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

COMMENTS

Although there are only a few reported cases in Texas on this topic, it is the critical issue in many cases in other jurisdictions.

PRACTICE TIPS

Review other states' case law to develop theories for argument. The American Academy of Assisted Reproductive Technology Attorneys website, **www.aaarta.org**, provides current information on developing law.

Prior to medical intervention to assist in family creation, all parties involved must receive legal and medical information sufficient to allow informed consent to clarify and record their intentions.

ANNOTATIONS

In re B.N.L.-B, 523 S.W.3d 254, 261 (Tex. App.—Dallas 2017, no pet.). Child's parents entered into a donor agreement with the donor father. The trial court then entered orders in an SAPCR in which the donor father was provided limited possession of the child. When the donor father sought to modify the SAPCR, the child's parents challenged the donor father's standing to bring suit. The appellate court held that while section 160.702 bars a donor from having standing as a parent, it does not affect his standing to seek modification of an order affecting him.

In re P.S., 505 S.W.3d 106 (Tex. App.—Fort Worth 2016, no pet.). The parties engaged in a "nonmedical artificial insemination using Father's sperm." The appellate court affirmed the trial court's holding of paternity for father because he did not provide the sperm to a licensed physician for the purpose of the artificial insemination.

In re H.C.S., 219 S.W.3d 33 (Tex. App.—San Antonio 2006, no pet.). The San Antonio court of appeals disagreed with the reasoning in *In re Sullivan*, 157 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding), noting that Family Code subsection 160.102(a)(3) was subject to provisions regarding voluntary acknowledgment of paternity. The court held that an unmarried man who donated sperm for assisted reproduction and did not sign and file an acknowledgement of paternity lacked standing to maintain a suit to adjudicate his parental rights.

In re Sullivan, 157 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding). "If the Texas Legislature or the UPA drafters had intended to exclude [sperm] donors from the class of those who have standing to maintain a parentage proceeding, they easily could have excluded donors from the group of men 'whose paternity is to be adjudicated.' . . . The omission of such an exclusion from the statute suggests that our lawmakers intended a sperm donor to have standing as a man 'whose paternity is to be adjudicated.'"

In re K.M.H., 169 P.3d 1025 (Kan. 2007). Under Kansas law, which is substantially similar to Texas law, a donor, absent a written agreement to the contrary, does not have a parent-child relationship with a child born through artificial insemination.

K.M. v. E.G., 117 P.3d 673 (Cal. 2005). In this case a lesbian couple participated in a procedure wherein one partner supplied eggs and the other partner carried twins and gave birth. Though the two women presented themselves as a couple, the genetic mother executed standard egg donor forms that stated she was a donor and retained no parental rights. Upon dissolution of the partnership, the birthing mother argued that her former partner had no parental rights or standing to pursue a future relationship with the twins. The California Supreme Court found that both women were mothers based on genetics and gestation—distinguishing the case from an unknown donor situation.

RESOURCES

American Academy of Assisted Reproductive Technology Attorneys (AAARTA), **www.aaarta.org.**

American Society of Reproductive Medicine (ASRM), **www.asrm.org**.

Charlie Hodges, *Dr. Strangelove: How Divorce Courts Deal with Frozen Sperm and Embryos*, Adv. Fam. L. (2010).

Cheryl Lee-Shannon, Don Royall, Ellen A. Yarrell, & Michael Heard, *A Practical Guide to Gestational Agreements, A.R.T. and Adoption Issues*, Adv. Fam. L. (2007).

Ellen A. Yarrell, *Looking For Mr. Good Sperm: Sperm Donation—Are Donors In or Out?*, Adv. Fam. L. (2008).

Ellen A. Yarrell, *Parentage: A Question of Truth or Consequences*, Marriage Dissolution (2010).

Sec. 160.703. HUSBAND'S PATERNITY OF CHILD OF ASSISTED REPRODUCTION

If a husband provides sperm for or consents to assisted reproduction by his wife as provided by Section 160.704, he is the father of a resulting child.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.7031. UNMARRIED MAN'S PATERNITY OF CHILD OF ASSISTED REPRODUCTION

(a) If an unmarried man, with the intent to be the father of a resulting child, provides sperm to a licensed physician and consents to the use of that sperm for assisted reproduction by an unmarried woman, he is the father of a resulting child.

(b) Consent by an unmarried man who intends to be the father of a resulting child in accordance with this section must be in a record signed by the man and the unmarried woman and kept by a licensed physician.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 40, eff. September 1, 2007.

COMMENTS

This section is a codification of *In re Sullivan*, 157 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding).

Sec. 160.704. CONSENT TO ASSISTED REPRODUCTION

(a) Consent by a married woman to assisted reproduction must be in a record signed by the woman and her husband and kept by a licensed physician. This requirement does not apply to the donation of eggs by a married woman for assisted reproduction by another woman.

(b) Failure by the husband to sign a consent required by Subsection (a) before or after the birth of the child does not preclude a finding that the husband is the father of a child born to his wife if the wife and husband openly treated the child as their own.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 41, eff. September 1, 2007.

ANNOTATIONS

In re A.E., No. 09-16-00019-CV, 2017 WL 1535101 (Tex. App.—Beaumont Apr. 27, 2017, pet. filed) (mem. op.). The appellate court held that same-sex spouse could not rely on section 160.704 to establish standing because even if applied in a "gender-neutral manner" under *Obergefell v. Hodges*, it would not alleviate a party from producing a record of consent signed by both spouses and kept by a licensed physician.

Sec. 160.705. LIMITATION ON HUSBAND'S DISPUTE OF PATERNITY

(a) Except as otherwise provided by Subsection (b), the husband of a wife who gives birth to a child by means of assisted reproduction may not challenge his paternity of the child unless:

(1) before the fourth anniversary of the date of learning of the birth of the child he commences a proceeding to adjudicate his paternity; and

(2) the court finds that he did not consent to the assisted reproduction before or after the birth of the child.

(b) A proceeding to adjudicate paternity may be maintained at any time if the court determines that:

(1) the husband did not provide sperm for or, before or after the birth of the child, consent to assisted reproduction by his wife;

(2) the husband and the mother of the child have not cohabited since the probable time of assisted reproduction; and

(3) the husband never openly treated the child as his own.

(c) The limitations provided by this section apply to a marriage declared invalid after assisted reproduction.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001.

Sec. 160.706. EFFECT OF DISSOLUTION OF MARRIAGE

(a) If a marriage is dissolved before the placement of eggs, sperm, or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a record kept by a licensed physician that if assisted reproduction were to occur after a divorce the former spouse would be a parent of the child.

(b) The consent of a former spouse to assisted reproduction may be withdrawn by that individual in a record kept by a licensed physician at any time before the placement of eggs, sperm, or embryos.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 42, eff. September 1, 2007.

COMMENTS

This section provides a method for disposition of any remaining embryos created during a marriage. At this time, cryopreserved (frozen) embryo are considered community "property" subject to division by the court. Controversies arise when there is a conflict between a consent document or contract with a cryopreservation facility that are inconsistent with the divorcing spouses' current needs. Cases involving forced parenthood have created inconsistent results. The Texas legislature attempted to resolve post-divorce issues by enacting this section from the Uniform Parentage Act in 2001.

PRACTICE TIPS

Include a question on the client questionnaire as to whether the client has any preserved genetic material over which he or she maintains control. Otherwise, there may be a claim for an undivided asset postdivorce. If the parties have frozen embryos, request copies of all agreements with the storage facility.

ANNOTATIONS

Roman v. Roman, 193 S.W.3d 40 (Tex. App.—Houston [1st Dist.] 2006, pet. denied), *cert. denied*, 552 U.S. 1258 (2008). During marriage, the husband and wife pursued a family through artificial insemination. Eggs from the wife and sperm from the husband were used to create six embryos, three of which reached a stage in development that allowed for their cryopreservation for future use. Before the donation and fertilization process, the husband and wife both signed a written agreement in which they agreed that the embryos would be discarded in case of divorce. None of the embryos were implanted in the wife during the marriage. The husband filed for divorce. The trial court found that the frozen embryos were community property and awarded them to wife as part of a just and right division of the parties' property. The husband appealed citing the agreement that the embryos would be discarded upon divorce. The wife countered arguing that the agreement was counter to the public policy of the state of Texas and that she did not believe the divorce provisions applied when none of the embryos were implanted during the marriage. Here, the court of appeals held that the trial court had abused its discretion by "improperly re[writing] the parties' agreement instead of enforcing what the parties had voluntarily decided in the event of divorce" and remanded the case to the trial court to enter an order consistent with the parties' agreement that the embryos be discarded.

York v. Jones, 717 F. Supp. 421 (E.D. Va. 1989). A storage facility refused to ship stored embryos at the request of the genetic contributors based on concerns for damage to the embryos. The court held that the creators of the embryos were the owners with full decision-making authority.

Reber v. Reiss, 42 A.3d 1131 (Pa. Super. Ct. 2012). In a divorce proceeding, the wife sought use of frozen embryos created during the marriage, due to a chemotherapy protocol. The husband objected and requested destruction of the embryos. The trial court determined that the embryos were the wife's last opportunity to bear a child and awarded her the use of the embryos for purpose of attempting a pregnancy. The appellate court reviewed decisions from other jurisdictions finding that other courts utilized three methods of analysis: a contractual approach, a contemporaneous mutual consent approach and a balancing approach. In this case, using a balancing approach, the appellate court affirmed the award of the embryos to the wife for her exclusive use.

In re Marriage of Nash, No. 62553-5-I, 2009 WL 1514842 (Wash. Ct. App. June 1, 2009). A husband and wife sought artificial insemination using the husband's sperm and donor eggs. An agreement drafted by the medical facility and signed by both parties included that upon "divorce (if not addressed in a divorce settlement)" that the wife would

have the right to determine the disposition of the embryos. The parties divorced, and the trial court ruled that the husband was entitled to control the disposition of the remaining frozen embryos noting that the plain language of the parties' agreement allowed for a divorce settlement to alter its terms. The wife appealed arguing that the parties had agreed that upon divorce wife would have the right to control the disposition of the embryos. Here, the Washington court of appeals upheld the trial court's award of the control of the disposition of the remaining embryos to the husband as part of the parties' divorce settlement.

RESOURCES

Deborah L. Forman, *Embryo Disposition and Divorce: Why Clinic Consent Forms are Not the Answer*, 24. J. Am. Acad. Matrim. Law 57 (2011).

Sec. 160.707. PARENTAL STATUS OF DECEASED SPOUSE

If a spouse dies before the placement of eggs, sperm, or embryos, the deceased spouse is not a parent of the resulting child unless the deceased spouse consented in a record kept by a licensed physician that if assisted reproduction were to occur after death the deceased spouse would be a parent of the child.

Added by Acts 2001, 77th Leg., ch. 821, Sec. 1.01, eff. June 14, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 43, eff. September 1, 2007.

COMMENTS

This section provides that posthumous use of frozen embryos and parentage of a resulting child is dependent on the deceased parent's consent in writing as to whether the deceased parent intends to be a parent or not postdeath. Request copies of all dispositional directives at the storage clinic to determine the position of the deceased spouse.

SUBCHAPTER I. GESTATIONAL AGREEMENTS

Sec. 160.751. DEFINITION

In this subchapter, "gestational mother" means a woman who gives birth to a child conceived under a gestational agreement.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

COMMENTS

The gestational agreement statute derives from the proposed Uniform Parentage Act drafted by the National Conference of Commissioners on Uniform State Laws in 2001 and redrafted in 2003. Article 8 presented a statutory framework for the process of collaborative family building utilizing assisted reproductive technology and third-party participants. The Texas legislature adopted the current version in 2003 which restricts the process to married couples. Further, the legislature opted to use the term "gestational mother," who must not be genetically related to the child, to avoid any confusion with the term "surrogacy."

ANNOTATIONS

Obergefell v. Hodges, 135 S. Ct. 2584 (2015). Declaration of same sex marriage constitutional in all states may impact the use of the gestational agreement statutes in Texas as the intended parents must be a married couple.

RESOURCES

American Academy of Assisted Reproductive Technology Attorneys (AAARTA), **www.aaarta.org**.

American Society of Reproductive Medicine **www.asrm.org**.

Charlie Hodges, *Dr. Strangelove: How Divorce Courts Deal with Frozen Sperm and Embryos*, Adv. Fam. L. (2010).

Darra L. Hofman, *"Mama's Baby, Daddy's Maybe:" A State-by-State Survey of Surrogacy Laws and Their Disparate Gender Impact*, 35 Wm. Mitchell L. Rev. 449 (2009).

Cheryl Lee-Shannon, Don Royall, Ellen A. Yarrell, & Michael Heard, *A Practical Guide to Gestational Agreements, A.R.T. and Adoption Issues*, Adv. Fam. L. (2007).

Ellen A. Yarrell, *Looking For Mr. Good Sperm: Sperm Donation—Are Donors In or Out?*, Adv. Fam. L. (2008).

Ellen A. Yarrell, *Parentage: A Question of Truth or Consequences*, Marriage Dissolution (2010).

Sec. 160.752. SCOPE OF SUBCHAPTER; CHOICE OF LAW

(a) Notwithstanding any other provision of this chapter or another law, this subchapter authorizes an agreement between a woman and the intended parents of a child in which the woman relinquishes all rights as a parent of a child conceived by means of assisted reproduction and that provides that the intended parents become the parents of the child.

(b) This subchapter controls over any other law with respect to a child conceived under a gestational agreement under this subchapter.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

PRACTICE TIPS

When handling a gestational agreement involving parties from two or more states, the practitioner should contact a member of the American Academy of Assisted Reproductive Technology Attorneys in each state to verify whether or not the state has specific statutes permitting such agreements and the requirements or restrictions imposed by statute or case law.

ANNOTATIONS

Hodas v. Morin, 814 N.E.2d 320 (Mass. 2004). A gestational carrier who resided in New York, but sought obstetrical care and delivered in Massachusetts, sought validation of the agreement in Massachusetts since New York law prohibits surrogacy/gestational agreements. The Massachusetts Supreme Judicial Court permitted the validation of the gestational agreement under Massachusetts law and provided the intended parents with a prebirth order establishing their parentage.

Johnson v. Calvert, 851 P.2d 776 (Cal. 1993). The California Supreme Court held that the intention of the parties to a gestational/surrogacy arrangement is the controlling factor in determining the parentage in cases where third parties are involved in the conception or birth of a child.

Sec. 160.753. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP

(a) Notwithstanding any other provision of this chapter or another law, the mother-child relationship exists between a woman and a child by an adjudication confirming the woman as a parent of the child born to a gestational mother under a gestational agreement if the gestational agreement is validated under this subchapter or enforceable under other law, regardless of the fact that the gestational mother gave birth to the child.

(b) The father-child relationship exists between a child and a man by an adjudication confirming the man as a parent of the child born to a gestational mother under a gestational agreement if the gestational agreement is validated under this subchapter or enforceable under other law.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

COMMENTS

There is no requirement that either the intended mother or the intended father have a biological relationship with the resulting child.

PRACTICE TIPS

The gestational agreement should state whether either intended parent has contributed his or her gametes to the creation of the embryo used in the assisted reproductive procedure. Upon presentation to the court, the validation of the gestational agreement, assuming all requirements are met, establishes the parentage of the resulting child irrespective of biological connection. Currently there are no Texas cases construing this statute; however, numerous states have addressed the issue.

ANNOTATIONS

Nolan v. LaBree, 52 A.3d 923 (Me. 2012). The Maine Supreme Court addressed the issue of parentage in gestational births ruling that district courts have the authority to determine a child's parentage when the child is conceived through assisted reproduction procedures involving a third-party carrier. The case involved a married couple from Massachusetts working with a gestational carrier from Maine. The intended parent's gametes were used to create the embryo. All parties to the gestational agreement acknowledged that the intended parents were the parents; however, the hospital refused to place the intended parents' names on the birth certificate forms. The trial court named the intended father a legal parent because of his paternity. The court declined to rule on the maternity in a gestational carrier context. The intended mother was named a de facto parent but the court named the gestational carrier as the mother. The supreme court established that the district court had jurisdiction to determine both the paternity and maternity in the context of a gestational agreement.

Sec. 160.754. GESTATIONAL AGREEMENT AUTHORIZED

(a) A prospective gestational mother, her husband if she is married, each donor, and each intended parent may enter into a written agreement providing that:

(1) the prospective gestational mother agrees to pregnancy by means of assisted reproduction;

(2) the prospective gestational mother, her husband if she is married, and each donor other than the intended parents, if applicable, relinquish all parental rights and duties with respect to a child conceived through assisted reproduction;

(3) the intended parents will be the parents of the child; and

(4) the gestational mother and each intended parent agree to exchange throughout the period covered by the agreement all relevant information regarding the health of the gestational mother and each intended parent.

(b) The intended parents must be married to each other. Each intended parent must be a party to the gestational agreement.

(c) The gestational agreement must require that the eggs used in the assisted reproduction procedure be retrieved from an intended parent or a donor. The gestational mother's eggs may not be used in the assisted reproduction procedure.

(d) The gestational agreement must state that the physician who will perform the assisted reproduction procedure as provided by the agreement has informed the parties to the agreement of:

(1) the rate of successful conceptions and births attributable to the procedure, including the most recent published outcome statistics of the procedure at the facility at which it will be performed;

(2) the potential for and risks associated with the implantation of multiple embryos and consequent multiple births resulting from the procedure;

(3) the nature of and expenses related to the procedure;

(4) the health risks associated with, as applicable, fertility drugs used in the procedure, egg retrieval procedures, and egg or embryo transfer procedures; and

(5) reasonably foreseeable psychological effects resulting from the procedure.

(e) The parties to a gestational agreement must enter into the agreement before the 14th day preceding the date the transfer of eggs, sperm, or embryos to the gestational mother occurs for the purpose of conception or implantation.

(f) A gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse.

(g) A gestational agreement may not limit the right of the gestational mother to make decisions to safeguard her health or the health of an embryo.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

COMMENTS

This section creates the most confusion regarding the use of the gestational agreement for family formation. Under Texas law, donors have no parental rights and cannot sue or be sued. *See* Tex. Fam. Code § 160.702. Donors rarely participate in the drafting or execution of a gestational agreement contemplated under this statute. Rather, donors execute forms to the fertility clinic or physician stating his or her position as "donor" and do not retain any parental rights concerning the use or disposition of the gametes used or the resulting embryo after the process is concluded. The intended parents, as recipients of the donated genetic material (gametes), become the legally responsible parties once the assisted reproductive procedure commences with the creation of embryo.

Major issues in drafting a valid gestational agreement involve the selective reduction of the number of potential fetuses and the gestational mother's right to terminate the pregnancy. Statistics show that assisted reproduction procedures enhance the opportunity for multiple births. Careful drafting must address this constitutionally protected right. The dilemma is best illustrated when the carrier has no genetic relationship to the fetus and neither intended parent is biologically connected.

PRACTICE TIPS

Practitioners should seek an interlocutory order establishing the parentage of the embryo upon birth as well as validating the agreement between the intended parents, the gestational mother, and her husband, if any. A certified copy of the interlocutory order will assist hospital personnel in submitting the official birth certificate request (must be filed with the vital statistics unit within five days of birth) as well as establishing the rights of the intended parents regarding decision making concerning the resulting child.

Practitioners should urge the participants to the agreement to discuss the issue openly and seek counseling in order to establish a consensus on the issue. No Texas case addresses this issue to date; however, other state courts have dealt with the propriety of agreements that purport to restrict a woman's right to terminate a pregnancy.

ANNOTATIONS

Planned Parenthood v. Casey, 505 U.S. 833 (1992). The U.S. Supreme Court permitted a state to enact regulations that express concern for fetal life and encourage women to seek other options than termination of the fetus, as long as the regulations do not pose a substantial obstacle to the woman's right to choose to terminate the pregnancy.

Roe v. Wade, 410 U.S. 113 (1973). The U.S. Supreme Court established that a woman has a constitutional right, together with her physician, to decide whether or not to terminate a pregnancy. The Court held that prior to fetal viability, a woman has an unfettered right to make the decision to terminate a pregnancy. The Court affirmed the state's interest in protecting human life, which must be balanced with a woman's liberty.

Sec. 160.755. PETITION TO VALIDATE GESTATIONAL AGREEMENT

(a) The intended parents and the prospective gestational mother under a gestational agreement may commence a proceeding to validate the agreement.

(b) A person may maintain a proceeding to validate a gestational agreement only if:

(1) the prospective gestational mother or the intended parents have resided in this state for the 90 days preceding the date the proceeding is commenced;

(2) the prospective gestational mother's husband, if she is married, is joined as a party to the proceeding; and

(3) a copy of the gestational agreement is attached to the petition.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

COMMENTS

This section is intended to prevent forum shopping. Very few states have adopted article 8 of the Uniform Parentage Act. Further, the states that adopted the legislation each modified the statute to reflect each state's view on the issue of third-party family formation.

PRACTICE TIPS

There is no requirement for the participation of a donor.

Sec. 160.756. HEARING TO VALIDATE GESTATIONAL AGREEMENT

(a) A gestational agreement must be validated as provided by this section.

(b) The court may validate a gestational agreement as provided by Subsection (c) only if the court finds that:

(1) the parties have submitted to the jurisdiction of the court under the jurisdictional standards of this chapter;

(2) the medical evidence provided shows that the intended mother is unable to carry a pregnancy to term and give birth to the child or is unable to carry the pregnancy to term and give birth to the child without unreasonable risk to her physical or mental health or to the health of the unborn child;

(3) unless waived by the court, an agency or other person has conducted a home study of the intended parents and has determined that the intended parents meet the standards of fitness applicable to adoptive parents;

(4) each party to the agreement has voluntarily entered into and understands the terms of the agreement;

(5) the prospective gestational mother has had at least one previous pregnancy and delivery and carrying another pregnancy to term and giving birth to another child would not pose an unreasonable risk to the child's health or the physical or mental health of the prospective gestational mother; and

(6) the parties have adequately provided for which party is responsible for all reasonable health care expenses associated with the pregnancy, including providing for who is responsible for those expenses if the agreement is terminated.

(c) If the court finds that the requirements of Subsection (b) are satisfied, the court may render an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born under the agreement.

(d) The court may validate the gestational agreement at the court's discretion. The court's determination of whether to validate the agreement is subject to review only for abuse of discretion.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

COMMENTS

The statute requires that all parties to the agreement execute the agreement including the gestational mother's husband if she is married at least fourteen days before implantation. The in vitro fertilization procedure involves two steps after the gametes are collected: (1) depositing the gametes in a petri dish and (2) after three to four days of development, implantation in the uterus of the gestational mother occurs.

Upon request, most courts waive the requirement of a social study if the intended parents are the genetic parents. It is within the discretion of the court.

Whether a court requires expert testimony as to the intended mother's inability to carry a child to term is also subject to the court's discretion.

PRACTICE TIPS

Although the statute does not require validation of the agreement before implantation, good practice dictates that a court will review the agreement more favorably if a pregnancy has not already occurred. A preliminary hearing to secure an interlocutory order allows the court to review the agreement and assess the propriety of the agreement before a pregnancy. Before the hearing, the gestational mother and her husband, if any, should execute waivers of citation to confirm his or her knowledge of the legal proceeding. Because the case is filed before the implantation occurs and a pregnancy results, the time frame for the case may exceed the court's docket control order program.

Most courts determine if the intended mother is qualified to state her own medical condition without a physician statement present to verify the information. A good plan is to have a letter from the treating obstetrician or reproductive endocrinologist stating the medical condition which prevents a viable pregnancy by the intended mother.

Sec. 160.757. INSPECTION OF RECORDS

The proceedings, records, and identities of the parties to a gestational agreement under this subchapter are subject to inspection under the same standards of confidentiality that apply to an adoption under the laws of this state.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

Sec. 160.758. CONTINUING, EXCLUSIVE JURISDICTION

Subject to Section 152.201, a court that conducts a proceeding under this subchapter has continuing, exclusive jurisdiction of all matters arising out of the gestational agreement until the date a child born to the gestational mother during the period covered by the agreement reaches 180 days of age.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

Sec. 160.759. TERMINATION OF GESTATIONAL AGREEMENT

(a) Before a prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, her husband if she is married, or either intended parent may termi-

nate a gestational agreement validated under Section 160.756 by giving written notice of the termination to each other party to the agreement.

(b) A person who terminates a gestational agreement under Subsection (a) shall file notice of the termination with the court. A person having the duty to notify the court who does not notify the court of the termination of the agreement is subject to appropriate sanctions.

(c) On receipt of the notice of termination, the court shall vacate the order rendered under Section 160.756 validating the gestational agreement.

(d) A prospective gestational mother and her husband, if she is married, may not be liable to an intended parent for terminating a gestational agreement if the termination is in accordance with this section.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

Sec. 160.760. PARENTAGE UNDER VALIDATED GESTATIONAL AGREEMENT

(a) On the birth of a child to a gestational mother under a validated gestational agreement, the intended parents shall file a notice of the birth with the court not later than the 300th day after the date assisted reproduction occurred.

(b) After receiving notice of the birth, the court shall render an order that:

(1) confirms that the intended parents are the child's parents;

(2) requires the gestational mother to surrender the child to the intended parents, if necessary; and

(3) requires the vital statistics unit to issue a birth certificate naming the intended parents as the child's parents.

(c) If a person alleges that a child born to a gestational mother did not result from assisted reproduction, the court shall order that scientifically accepted parentage testing be conducted to determine the child's parentage.

(d) If the intended parents fail to file the notice required by Subsection (a), the gestational mother or an appropriate state agency may file the notice required by that subsection. On a showing that an order validating the gestational agreement was rendered in accordance with Section 160.756, the court shall order that the intended parents are the child's parents and are financially responsible for the child.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 22, eff. June 18, 2005. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.076, eff. April 2, 2015.

COMMENTS

A gestational mother may pursue the validity of the gestational agreement as well as the establishment of parentage of the intended parents in the event the intended parents fail to move forward. However, there are no reported case on point.

ANNOTATIONS

In re T.J.S., 54 A.3d 263 (N.J. 2012). Absent adoption, New Jersey did not recognize an infertile wife as the legal mother of her husband's biological child born to a gestational carrier.

In re S.N.V., 284 P.3d 147 (Colo. App. 2011). A Colorado trial court erred when it dismissed a wife's suit to establish her legal maternity of her husband's biological child born to a surrogate mother. Giving birth to a child is but one way to establish the mother-child relationship under the Uniform Parentage Act, the provisions of which apply equally to both

genders. The trial court should have considered other factors set forth in the act when evaluating the wife's claim. These provisions included that the husband and wife were married and that the wife had cared for the child.

Raftopol v. Ramey, 12 A.3d 783 (2011). Under Connecticut law, intended parents who are parties to a valid gestational agreement acquire parental status without respect to their biological relationship to a child, and each of them is entitled to establishment of parentage without the necessity of the gestational carrier's consent. In this case, a same-sex couple entered into a gestational agreement with a carrier. The agreement specifically stated that the gestational carrier did not retain any parental rights (the egg was donated). One of the partners was the sperm contributor to the embryo. The Connecticut Supreme Court affirmed the trial court's order establishing both men as parents and requiring a birth certificate to issue upon the child's birth.

RESOURCES

Thomas B. Scheffey, *Special Delivery: Court Ruling Pioneers New Route to Legal Parenthood*, Conn. L. Trib. (Jan. 24, 2011).

Sec. 160.761. EFFECT OF GESTATIONAL MOTHER'S MARRIAGE AFTER VALIDATION OF AGREEMENT

If a gestational mother is married after the court renders an order validating a gestational agreement under this subchapter:

(1) the validity of the gestational agreement is not affected;

(2) the gestational mother's husband is not required to consent to the agreement; and

(3) the gestational mother's husband is not a presumed father of the child born under the terms of the agreement.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

Sec. 160.762. EFFECT OF GESTATIONAL AGREEMENT THAT IS NOT VALIDATED

(a) A gestational agreement that is not validated as provided by this subchapter is unenforceable, regardless of whether the agreement is in a record.

(b) The parent-child relationship of a child born under a gestational agreement that is not validated as provided by this subchapter is determined as otherwise provided by this chapter.

(c) A party to a gestational agreement that is not validated as provided by this subchapter who is an intended parent under the agreement may be held liable for the support of a child born under the agreement, even if the agreement is otherwise unenforceable.

(d) The court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this section. Attorney's fees awarded by the court may be paid directly to the attorney. An attorney who is awarded attorney's fees may enforce the order in the attorney's own name.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

COMMENTS

The intent of this section is to distinguish between an unenforceable agreement and a prohibited agreement. The legislature focused on the need for children born as a result of assisted reproduction technology to have clearly defined parentage at birth. The statutory framework envisioned that intended parents would avail themselves of the statutory plan and establish the child's parentage. If intended parents fail to complete the legal process, then the statute allows for enforcement of an unvalidated agreement by assessing various fees and costs to the intended parents.

The cost of the entire process generally predicts that the intended parents will follow through. A prebirth interlocutory order assures this result until the court enters a final order.

Sec. 160.763. HEALTH CARE FACILITY REPORTING REQUIREMENT

(a) The executive commissioner of the Health and Human Services Commission by rule shall develop and implement a confidential reporting system that requires each health care facility in this state at which assisted reproduction procedures are performed under gestational agreements to report statistics related to those procedures.

(b) In developing the reporting system, the executive commissioner shall require each health care facility described by Subsection (a) to annually report:

(1) the number of assisted reproduction procedures under a gestational agreement performed at the facility during the preceding year; and

(2) the number and current status of embryos created through assisted reproduction procedures described by Subdivision (1) that were not transferred for implantation.

Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.077, eff. April 2, 2015.

COMMENTS

As assisted reproductive technology changes and more children are born, the statistics are worthy of review.

PRACTICE TIPS

The practitioner should encourage prospective intended parents to discuss the statistical information available from reliable information sources. Although to date, there is no correlation with birth defects involved with assisted reproduction, there is significant information about the possibility of multiple births.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE B. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. GROUNDS

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP

(a) In this section, "born addicted to alcohol or a controlled substance" means a child:

(1) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and

(2) who, after birth as a result of the mother's use of the controlled substance or alcohol:

(A) experiences observable withdrawal from the alcohol or controlled substance;

(B) exhibits observable or harmful effects in the child's physical appearance or functioning; or

(C) exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

(iv) Section 21.11 (indecency with a child);

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(x) Section 22.041 (abandoning or endangering child);

(xi) Section 25.02 (prohibited sexual conduct);

(xii) Section 43.25 (sexual performance by a child);

(xiii) Section 43.26 (possession or promotion of child pornography);

(xiv) Section 21.02 (continuous sexual abuse of young child or children);

(xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and

(xvi) Section 43.05(a)(2) (compelling prostitution);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:

(i) the department has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

(i) failed to complete a court-ordered substance abuse treatment program; or

(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

(i) conviction of an offense; and

(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;

(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;

(T) been convicted of:

(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);

(iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or

(iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

(U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that con-

tains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; and

(2) that termination is in the best interest of the child.

(c) A court may not make a finding under Subsection (b) and order termination of the parent-child relationship based on evidence that the parent:

(1) homeschooled the child;

(2) is economically disadvantaged;

(3) has been charged with a nonviolent misdemeanor offense other than:

(A) an offense under Title 5, Penal Code;

(B) an offense under Title 6, Penal Code; or

(C) an offense that involves family violence, as defined by Section 71.004 of this code;

(4) provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or

(5) declined immunization for the child for reasons of conscience, including a religious belief.

(d) A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that:

(1) the parent was unable to comply with specific provisions of the court order; and

(2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

(e) This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 65, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 60, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1087, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 809, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 508 (H.B. 657), Sec. 2, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.30, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 86 (S.B. 1838), Sec. 1, eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 4.02, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.078, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 11, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 40 (S.B. 77), Sec. 2, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 12, eff. Sept. 1, 2017.

ANNOTATIONS

Burden of proof

In re Morris, 498 S.W.3d 624 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). Family Code subsection 153.0071(e) (stating if an MSA meets the requirements of that statute, a party is entitled to judgment on that agreement) does not apply in termination cases. The court found that the application of subsection 153.0071(e) would render portions of section 161.001 meaningless and that the proponent of the MSA still needs to prove by clear and convincing evidence that the termination is in the child's best interest, even with a valid MSA.

In re E.W., No. 06-15-00018-CV, 2015 WL 3918292 (Tex. App.—Texarkana 2015, no pet.). To uphold termination of a parent-child relationship under Tex. Fam. Code § 161.001(b)(1)(O), the TDFPS must present sufficient evidence.

Failure to appropriately use prior hearing testimony and reliance on a revoked Rule 11 agreement was not sufficient to meet the burden of proof.

In re R.W., 129 S.W.3d 732 (Tex. App.—Fort Worth 2004, pet. denied). "Clear and convincing evidence is 'the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.' This intermediate standard falls between the preponderance standard of ordinary civil proceedings and the reasonable doubt standard in criminal proceedings. While the proof must be more than merely the greater weight of the credible evidence, there is no requirement that the evidence be unequivocal or undisputed. Termination proceedings should be strictly scrutinized, and involuntary termination statutes are strictly construed in favor of the parent."

In re D.P., 96 S.W.3d 333 (Tex. App.—Amarillo 2001, no pet.). Evidence that merely raises a suspicion that a ground for termination has been met is not sufficient to satisfy the standard of clear and convincing evidence.

Conflicts in representation between parent respondents

In re B.L.D., 113 S.W.3d 340 (Tex. 2003), *cert. denied sub nom. Dossey v. Texas Dep't of Protective & Regulatory Services*, 541 U.S. 945 (2004). "[I]n deciding whether there is a conflict of interest between parents opposing termination of their parental rights in a single lawsuit, the trial court must determine whether there is a substantial risk that the appointed counsel's obligations to one parent would materially and adversely affect his or her obligations to the other parent."

Due process

In re P.M., 530 S.W.3d 24 (Tex. 2016). The right to representation in termination cases for indigent litigants extends through exhaustion of appeals, including petition for review to the Texas Supreme Court.

Wiley v. Spratlan, 543 S.W.2d 349 (Tex. 1976). "Actions which break the ties between a parent and child 'can never be justified without the most solid and substantial reasons.' Particularly in an action which permanently sunders those ties, should the proceedings be strictly scrutinized. This court has always recognized the strong presumption that the best interest of a minor is usually served by keeping custody in the natural parents."

In re E.C.Q.L., No. 12-16-00297-CV, 2017 WL 1534043 (Tex. App.—Tyler Apr. 28, 2017, no pet.) (mem. op.). The TDFPS's efforts to contact father prior to asking for substituted service did not meet the standard of a "diligent search" sufficient to warrant service by publication. Therefore, the court found that citation by publication was constitutionally inadequate and deprived father of due process. The court also found that the six-month time period for challenging the validity of an order terminating parental rights of a person who is served by publication does not apply when there has been a failure of service and, in that circumstance, the judgment is void and can be challenged at any time.

In re M.M.S., No. 14-16-00349-CV, 2016 WL 6134456 (Tex. App.—Houston [14th Dist.] Oct. 20, 2016, no. pet.) (mem. op.). Mother was seventeen years old when the case began and was personally served. Three weeks later, she turned eighteen but was not personally served after her eighteenth birthday. The appellate court held that, as a minor, she did not have capacity to receive service at the time she was served and, therefore, the trial court did not obtain personal jurisdiction over her. The court said that she would have had to be served through a legal guardian, a "next friend," or a guardian ad litem.

In re S.G.S., 130 S.W.3d 223 (Tex. App.—Beaumont 2004, no pet.). Generally, due process does not require appellate courts to review unpreserved complaints in termination-of-parental-rights cases. However, in *In re M.S.*, 115 S.W.3d 534, 544 (Tex. 2003), the Texas Supreme Court held that an appointed counsel's unjustifiable failure to preserve a factual sufficiency point on appeal could amount to a due-process violation. A court should consider three factors in reviewing whether due process has been met: (1) the private interests at stake; (2) the government's interest in the proceeding; and (3) the risk of erroneous deprivation of parental rights. The net result of these factors is balanced against the presumption that the procedural rule comports with constitutional due-process requirements.

In re L.F., 617 S.W.2d 335 (Tex. Civ. App.—Amarillo 1981, no writ). The right of a parent to "conceive, bear and nurture children is one of constitutional dimensions." However, the Due Process and Equal Protection Clauses of the Fourteenth Amendment do not require proof that no other alternatives, short of termination of parental rights, are available.

General

In re A.J.R., No. 13-08-00607-CV, 2009 WL 2574079 (Tex. App.—Corpus Christi–Edinburg Aug. 20, 2009, no pet.) (mem. op.). A trial court erred in ordering a woman's surgical sterilization when it found that her ovaries and uterus were deadly weapons. However, the error did not support a reversal of the termination of the woman's parental rights because the trial court found one ground for termination by clear and convincing evidence and that termination was in the child's best interest.

In re J.I.T.P., 99 S.W.3d 841 (Tex. App.—Houston [14th Dist.] 2003, no pet.). To terminate parental rights under this section, a trial court must find by clear and convincing evidence that termination is in the child's best interest and that the parent has committed one or more of the acts specifically detailed in former subsection 161.001(1), now 161.001(b)(1). Only one ground for termination plus a best interest finding is necessary to support the termination of parental rights.

Incarcerated respondents/bench warrant

In re L.N.C., ___ S.W.3d ___, No. 14-18-00691-CV, 2019 WL 390124 (Tex. App.—Houston [14th Dist.] Jan. 31, 2019, no pet.). A trial court erred in denying an incarcerated father a meaningful opportunity to participate in a termination-of-parental-rights trial in violation of his right to procedural due process when the trial court denied a motion for continuance filed by the father's counsel when the father failed to appear despite being bench warranted, father and child had an interest in the accuracy and justice of the decision to end their relationship, and the father's absence meant counsel could not communicate with him about rebutting the TDFPS's evidence.

In re D.C.C., 359 S.W.3d 714 (Tex. App.—San Antonio 2011, pet. denied). "Texas courts recognize a variety of factors that trial courts should consider when deciding whether to grant an inmate's request for a bench warrant. These factors include the cost and inconvenience of transporting the inmate to the courtroom; the security risk the inmate presents to the court and public; whether the inmate's claims are substantial; whether the matter's resolution can reasonably be delayed until the inmate's release; whether the inmate can and will offer admissible, noncumulative testimony that cannot be effectively presented by deposition, telephone, or some other means; whether the inmate's presence is important in judging her demeanor and credibility; whether the trial is to the court or a jury; and the inmate's probability of success on the merits. The inmate bears the burden of identifying with sufficient specificity the grounds for the ruling she seeks and providing factual information to the trial court to assess the necessity of the inmate's appearance."

In re A.H.L., 214 S.W.3d 45 (Tex. App.—El Paso 2006, pet. denied). A trial court did not abuse its discretion by denying the respondent father's request for a bench warrant because the father's criminal history supported the court's security concerns, the security plan would require unreasonable cost and inconvenience by using ten deputies for the requisite security, the case could not be delayed until the father's release as he was not parole-eligible for six more years, and nothing suggested that the respondent father could not have offered testimony by other means.

In re J.D.S., 111 S.W.3d 324 (Tex. App.—Texarkana 2003, no pet.). A trial court erred when it summarily denied an incarcerated respondent's request to attend his termination trial. When considering whether to grant or deny a request to be physically present at a proceeding in a termination-of-parental-rights case, a trial court must consider factors including cost and convenience, security risks, the need to assess the inmate's demeanor, the nature of the proceeding, and whether it is possible to postpone the proceeding until the incarcerated respondent is released.

Jury charge

Texas Dep't of Human Services v. E.B., 802 S.W.2d 647 (Tex. 1990). Jury charges in termination-of-parental-rights cases should be the same as in other civil cases. A broad-form, or global, question asking whether parental rights should be terminated is proper. The inclusion of independent grounds for termination is not required.

Rogers v. Texas Dep't of Family & Protective Services, 175 S.W.3d 370 (Tex. App.—Houston [1st Dist.] 2005, pet. dism'd w.o.j.). A jury charge on the question of whether termination of parental rights is in a child's best interest that recited *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976), and statutory factors was not erroneous. A jury charge on endangerment was not erroneous when the record was clear that the jury based its findings on a criminal conviction for injury to the child.

Right to counsel

In re M.S., 115 S.W.3d 534, 544 (Tex. 2003). "We hold that the statutory right to counsel in parental-rights termination cases [involving a governmental entity] embodies the right to effective counsel."

In re A.J., 559 S.W.3d 713 (Tex. App.—Tyler 2018, no pet.). Trial court's error in failing to admonish an incarcerated father of the right to counsel or timely appoint counsel before the commencement of his termination-of-parental-rights trial was reversible error where the father did not waive his right to counsel and there was no way to discern what the outcome of the proceeding would have been had the father been represented by counsel.

In re J.C., 250 S.W.3d 486 (Tex. App.—Fort Worth 2008, pet. denied), *cert. denied sub nom. Rhine v. Deaton*, 559 U.S. 903 (2010). In private termination-of-parental-rights cases, respondent parents are not entitled to appointed counsel. Subsection 107.013(a)(1) mandates the appointment of attorneys ad litem only in cases filed by a governmental entity.

Porter v. Texas Dep't of Protective & Regulatory Services, 105 S.W.3d 52 (Tex. App.—Corpus Christi 2003, no pet.). If court-appointed counsel for an indigent party in a termination-of-parental-rights case determines that there are no nonfrivolous issues for appeal, counsel is permitted to file an *Anders* brief; *see Anders v. California*, 386 U.S. 738 (1967), to that effect.

Standard of review

In re R.W., 129 S.W.3d 732 (Tex. App.—Fort Worth 2004, pet. denied) (citations omitted). "The Texas Supreme Court recently clarified the appellate standards of review to be applied to legal and factual sufficiency of the evidence challenges in light of the clear and convincing evidence burden of proof in termination proceedings. Because termination findings must be based upon clear and convincing evidence, not simply a preponderance of the evidence, the supreme court has held that the traditional legal and factual standards of review are inadequate. Instead, both legal and factual sufficiency reviews in termination cases must take into consideration whether the evidence is such that a trier of fact could reasonably form a firm belief or conviction about the truth of the matter on which the State bears the burden of proof."

Spangler v. Texas Dep't of Protective & Regulatory Services, 962 S.W.2d 253 (Tex. App.—Waco 1998, no pet.). "When the trier of fact is required to make a finding by clear and convincing evidence, the court of appeals will only sustain a point of error alleging insufficient evidence if the trier of fact could not reasonably find the existence of the fact to be established by clear and convincing evidence. . . . Therefore, just as the clear and convincing standard of proof is an intermediate standard, falling between the preponderance standard of ordinary civil proceedings and the reasonable doubt standard of criminal proceedings, this standard of appellate review is an intermediate standard. This intermediate standard of review is necessary to protect the fundamental constitutional rights involved by termination of parental rights."

Sec. 161.001(b)(1)(A): "voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return"

In re R.M., 180 S.W.3d 874 (Tex. App.—Texarkana 2005, no pet.). The record did not support termination under former subsection 161.001(1)(a), now 161.001(b)(1)(A), when the undisputed evidence at trial showed that the father visited the child and called at least once to ask about the child. Further, the petitioners presented no evidence that the father made affirmative statements of any intent not to return.

In re R.D.S., 902 S.W.2d 714 (Tex. App.—Amarillo 1995, no writ). Under former Family Code subsection 15.02(a)(1)(A), now subsection 161.001(b)(1)(A), a revoked affidavit of relinquishment of parental rights, executed pursuant to an adoption, is evidence of an intent to abandon a child, even when the affidavit itself no longer can support termination upon voluntary relinquishment of a child. However, *see Swinney v. Mosher*, 830 S.W.2d 187 (Tex. App.—Fort Worth 1992, writ denied), where the Fort Worth court of appeals "could not possibly find" that a revoked affidavit of relinquishment evidenced an intent to abandon a child under this subsection.

Sec. 161.001(b)(1)(B): "voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months"

In re F.E.N., 542 S.W.3d 752 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Father did not voluntarily leave his child in the possession of the TDFPS for at least six months, as required to support order terminating his parental rights based on abandonment of a child by a parent for at least six months; there was evidence that the father visited with the child before his visitation was suspended by court order, and the record did not show a definitive consecutive six-month period wherein the father remained away from the child.

In re S.D.H., 591 S.W.2d 637 (Tex. Civ. App.—Eastland 1979, no writ). Events that occur before the birth of a child cannot constitute abandonment, and such events cannot constitute the voluntary leaving of a child alone or in the possession of another not the parent.

Brokenleg v. Butts, 559 S.W.2d 853 (Tex. Civ. App.—El Paso 1977, writ ref'd n.r.e.). Under former Family Code section 15.02, now subsection 161.001(b)(1)(B), when a parent provides for the support of a child by allowing the child to reside with grandparents, visits the child, and talks to the child on the telephone, there is insufficient evidence to terminate parental rights.

Jordan v. Hancock, 508 S.W.2d 878 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ). The mere imprisonment of a parent, of and by itself, does not constitute intentional abandonment of a child.

Sec. 161.001(b)(1)(C): "voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months"

Holick v. Smith, 685 S.W.2d 18 (Tex. 1985). Under former Family Code subsection 15.02(1)(C), now 161.001(b)(1)(C), the law required only that a parent make arrangements for adequate support of the children, not that the parent personally support them. Evidence that a mother left two children with prospective adoptive parents, moved to another city, failed to visit the children, and spoke to the children only once on the telephone was not sufficient to support termination under subsection (C).

In re J.R., 319 S.W.3d 773 (Tex. App.—El Paso 2010, no pet.). Evidence that a father had not seen his child in over ten years and failed to pay child support was sufficient to support termination under former subsection 161.001(1)(C), now 161.001(b)(1)(C).

In re D.J.J., 178 S.W.3d 424 (Tex. App.—Fort Worth 2005, no pet.). Evidence is insufficient to terminate an incarcerated father's parental rights for voluntarily leaving a child under former subsection 161.001(1)(C), now 161.001(b)(1)(C), when the separation was not voluntary because the parent was incarcerated before the child's birth.

In re B.T., 954 S.W.2d 44 (Tex. App.—San Antonio 1997, pet. denied). "To terminate the parental relationship on this ground [subsection 161.001(b)(1)(C)], the State must prove by clear and convincing evidence that [a parent] (1) voluntarily left the child, (2) alone or in the possession of another, (3) without providing adequate support of the child, (4) remained away for at least six months, and (5) termination is in the best interests of the child."

Sec. 161.001(b)(1)(D): "knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child"

In re A.A.Z., No. 14-17-00276-CV, 2017 WL 3612259 (Tex. App.—Houston [14th Dist.] Aug. 22, 2017, no pet.) (mem. op.). In evaluating endangerment under subsection 161.001(b)(1)(D), the court will consider the child's environment *before* the TDFPS obtained custody of the child. Inappropriate, abusive, or unlawful conduct by a parent or other persons who live in the child's home can create an environment that endangers the physical and emotional well-being of a child as required for termination under subsection 161.001(b)(1)(D).

Sec. 161.001(b)(1)(E): "engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child"

Texas Dep't of Human Services v. Boyd, 727 S.W.2d 531 (Tex. 1987). "While we agree that 'endanger' means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, it is not necessary that the conduct be directed at the child or that the child actually suffers injury. Rather, 'endanger' means to expose to loss or injury; to jeopardize, and imprisonment is certainly a factor to be considered by the trial court on the issue of endangerment."

In re C.M.C., 554 S.W.3d 164 (Tex. App.—Beaumont 2018, no pet.). Evidence was legally insufficient to show that the mother's conduct endangered the child's well-being physically or emotionally in proceeding terminating parental rights. TDFPS failed to admit into evidence the mother's or child's medical records, lab reports, or results of the mother's or child's drug screen; the maternal grandmother testified regarding the mother's history of drug use but had no personal knowledge whether the mother had addressed her drug problem; and the only evidence of the mother's drug use during her pregnancy was the hearsay testimony of a caseworker, which was not allowed into evidence.

In re E.J.Z., 547 S.W.3d 339 (Tex. App.—Texarkana 2018, no pet.). A child's unexplained, non-accidental fractures at various ages support a reasonable inference that the child's caregivers knew of the injuries and their cause, for purposes of termination of parental rights.

In re N.J.H., ___ S.W.3d ___, No. 01-18-00564-CV, 2018 WL 6617360 (Tex. App.—Houston [1st Dist.] Dec. 18, 2018, pet. denied) (Brown, J., concurring) (mem. op.). "[R]eliance on marijuana use—without accompanying evidence of impairment or some other circumstance that risks a child's health or safety—to show that a parent has engaged in a course of endangering conduct under Section 161.001(b)(1)(E) . . . is not what the statute requires. And that decision-making fails to consider that there has been a sea change in society's acceptance of limited marijuana use. It may no longer be warranted to presume that marijuana use, by itself, indicates parental neglect or endangerment. . . . [C]ourts should, under Section 161.001(b)(1)(E)'s endangerment predicate, examine whether the use endangered or created a risk of physical or emotional harm to the child under the facts of the case. After all, the statute does not list drug use itself as a ground for termination; termination is authorized only when the drug is used in an endangering manner. There was no evidence in this case, nor in many of the other termination appeals before our Court, regarding the physical effects of recreational marijuana use or whether the use or any pattern of use actually endangered the child. A parent's 'interest in the accuracy and justice of the decision to terminate his or her parental status is . . . a commanding one.' To terminate parental rights or deprive a parent of access to his or her child based on endangerment absent evidence that marijuana use has actually caused or is causing a risk of harm does not satisfy the strict standards that apply in these cases."

In re J.I.G., No. 01-18-00023-CV, 2018 WL 3233874, at *8 (Tex. App.—Houston [1st Dist.] July 3, 2018, no pet.) (mem. op.). A parent's "failure to provide appropriate medical care constituted endangering conduct for purposes of subsection E."

In re Z.J.J., No. 09-15-00025-CV, 2015 WL 4571393 (Tex. App.—Beaumont 2015, no pet.) (mem. op.). In affirming the termination of the mother, the court of appeals overruled the mother's claim that the evidence was insufficient to terminate her rights based on her conduct. The court reviewed the mother's conduct before and after the child's birth, concluding that "[b]ecause illegal drug use exposes the child to the possibility that the parent may be impaired or imprisoned, such use may support termination under [Tex. Fam. Code §] 161.001(b)(1)(E)."

In re A.C., No. 10-15-00192-CV, 2015 WL 6437843 (Tex. App.—Waco 2015, no pet.) (mem. op.). In affirming the parents' termination, the court of appeals stated that a specific danger to the child's physical or emotional well-being need not be established as a separate proposition. The danger may be inferred from the parents' conduct. Further, the ground does not require a physical injury; moreover, when the child's environment potentially presents an endangering situation and the parent is aware yet disregards the danger, that conduct supports a finding under Tex. Fam. Code § 161.001(b)(1)(D).

Jordan v. Dossey, 325 S.W.3d 700 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (citations omitted). "It is not necessary that the parent's conduct be directed towards the child or that the child actually be injured; rather, a child is endangered when the environment creates a potential for danger which the parent is aware of but disregards. Conduct that demonstrates awareness of an endangering environment is sufficient to show endangerment. In considering whether to terminate parental rights, the court may look at parental conduct both before and after the birth of the child. Section D permits termination based upon only a single act or omission. . . . Abusive and violent criminal conduct by a parent can produce an environment that endangers the well-being of a child. Evidence as to how a parent has treated another child or spouse is relevant regarding whether a course of conduct under section E has been established. Evidence that a person has engaged in abusive conduct in the past permits an inference that the person will continue violent behavior in the future. . . . Conduct that subjects a child to life of uncertainty and instability endangers the child's physical and emotional well-being. A parent's mental state may be considered in determining whether a child is endangered if that mental state allows the parent to engage in conduct that jeopardizes the physical or emotional well-being of the child. A parent's mental instability and attempt to commit suicide may contribute to a finding that the parent engaged in a course of conduct that endangered a child's physical or emotional well-being."

In re S.M.L., 171 S.W.3d 472 (Tex. App.—Houston [14th Dist.] 2005, no pet.). "While both subsections D and E focus on endangerment, they differ regarding the source and proof of endangerment. Subsection D concerns the child's living environment, rather than the conduct of the parent, though parental conduct is certainly relevant to the child's environment. Under Subsection E, the cause of the endangerment must be the parent's conduct and must be the result of a conscious course of conduct rather than a single act or omission. Endangerment can be exhibited by both actions and failures to act. It is not necessary that the parent's conduct be directed at the child or that the child actually be injured; rather, a child is endangered when the environment or the parent's course of conduct creates a potential for danger which the parent is aware of but disregards."

In re R.W., 129 S.W.3d 732 (Tex. App.—Fort Worth 2004, pet. denied). "To determine whether termination is necessary, courts may look to parental conduct both before and after the child's birth. Further, a father's conduct prior to the establishment of paternity may be considered as evidence of an endangering course of conduct."

In re Stevenson, 27 S.W.3d 195 (Tex. App.—San Antonio 2000, pet. denied). If termination of parental rights is sought under former subsection 161.001(1)(D), now 161.001(b)(1)(D), the trial court must instruct the jury that it must find by clear and convincing evidence that the parent knew the child was his when he engaged in the conduct proscribed by subsection 161.001(1)(D). However, if parental termination is sought under former subsection 161.001(1)(E), now 161.001(b)(1)(E), the trial court is not required to give such an instruction because such knowledge is not required.

In re M.G.D., 108 S.W.3d 508 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). "[J]urors are not required to ignore a long history of dependency and abusive behavior merely because it abates as trial approaches."

In re S.D., 980 S.W.2d 758 (Tex. App.—San Antonio 1998, pet. denied). "[C]onduct that subjects a child to a life of uncertainty and instability, endangers the physical and emotional well-being of a child."

In re Rodriguez, 940 S.W.2d 265 (Tex. App.—San Antonio 1997, writ denied). "[T]he environment which 'significantly impairs the child's physical health or emotional development' must be the product of some act or omission on the part of the natural parent."

Sec. 161.001(b)(1)(F): "failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition"

EDITOR'S NOTE: Under Family Code subsection 151.001(a)(3), a parent has "the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education."

In re D.M.D., 363 S.W.3d 916 (Tex. App.—Houston [14th Dist.] 2012, no pet.). A trial court may not order termination under former subsection 161.001(1)(F), now 161.001(b)(1)(F), without clear and convincing evidence of the parent's ability to support a child during the statutory period. A previous child support order is not evidence of a parent's ability to pay for purposes of this subsection; to hold otherwise would improperly shift the burden to the parent to disprove ability to pay.

In re C.L., 322 S.W.3d 889 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). Any excuse for failing to provide support, such as using the money for another purpose, is irrelevant in assessing a violation under former subsection 161.001(1)(F), now 161.001(b)(1)(F). However, a trial court may consider failure to support according to ability as a factor in determining the best interest of the child.

In re N.A.F., 282 S.W.3d 113 (Tex. App.—Waco 2009, no pet.). Termination was improper when it was undisputed that a mother did not offer testimony regarding a father's ability to pay. A child support order is not evidence of a parent's ability to pay support during the statutory period.

In re R.M., 180 S.W.3d 874 (Tex. App.—Texarkana 2005, no pet.). "The 'in accordance with the parent's ability' language in subsection (F) is not found in subsections (B) or (C), the latter two of which require 'providing adequate support.' Therefore, the court's interpretation of subsection (C) in *Holick v. Smith*, 685 S.W.2d 18 (Tex. 1985), which held that merely making arrangements for the child's support is all that is required to meet the 'providing adequate support' requirement, is not controlling in a subsection (F) analysis."

In re D.J.J., 178 S.W.3d 424 (Tex. App.—Fort Worth 2005, no pet.). The evidence was insufficient to support termination under former subsection 161.001(1)(F), now 161.001(b)(1)(F), when the father was incarcerated and there was no evidence that he had any means of providing support for the child or that the child lacked anything.

Sec. 161.001(b)(1)(H): "voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth"

In re C.J.O., 325 S.W.3d 261 (Tex. App.—Eastland 2010, pet. denied). "The abandonment must be with knowledge of the pregnancy and must occur both during the pregnancy and after birth. When the child is born out of wedlock and the father doubts his paternity, there is no enforceable support obligation until paternity is established."

In re T.B.D., 223 S.W.3d 515 (Tex. App.—Amarillo 2006, no pet.). The evidence was insufficient to support termination under former subsection 161.001(1)(H), now 161.001(b)(1)(H), when a mother ended her relationship with the

father during the pregnancy, changed her telephone number to restrict the father's ability to reach her, and testified that she changed the telephone number because the father "wouldn't leave.us alone."

In re T.M.Z., 665 S.W.2d 184 (Tex. App.—San Antonio 1984, no writ). Abandonment does not require physical leaving or absence. Abandonment "can also mean to turn one's back on a duty that one has."

Sec. 161.001(b)(1)(K): "executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter"

In re A.H., No. 09-14-00291-CV, 2014 WL 7183973 (Tex. App.—Beaumont 2014, no pet.) (mem. op.). Appellants alleged that failure to strictly comply with the list of requirements in Tex. Fam. Code § 161.103 negated the validity of the affidavits of relinquishment. The court of appeals held that an affidavit of voluntary relinquishment signed, notarized, witnessed, and executed in compliance with section 161.103 is prima facie evidence of its validity. Absent evidence of fraud, duress, or overreaching, the affidavits were sufficient to support termination.

In re D.R.L.M., 84 S.W.3d 281 (Tex. App.—Fort Worth 2002, pet. denied). "The statute nowhere requires the trial court to abide by the parent's choice of a managing conservator expressed in the relinquishment affidavit."

Neal v. Texas Dep't of Human Services, 814 S.W.2d 216 (Tex. App.—San Antonio 1991, writ denied). "Because of the very nature of a voluntary relinquishment of parental rights, we find that it is implicit in the language of [former] section 15.03 that such an affidavit be executed voluntarily. Accordingly, we hold that only a voluntarily executed [former] section 15.03 affidavit will support a finding under [former] section 15.02(1)(K) of the Family Code. Stated another way, we hold that an involuntarily executed affidavit is a complete defense to a termination suit or decree based solely upon a finding under [former] section 15.02(1)(K) of the Family Code."

Sec. 161.001(b)(1)(L): "been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under [certain] sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of [certain] Penal Code sections"

C.H. v. Department of Family & Protective Services, Nos. 01-11-00385-CV, 01-11-00454-CV, 01-11-00455-CV, 2012 WL 586972 (Tex. App.—Houston [1st Dist.] Feb. 23, 2012, pet. denied) (mem. op.). "A number of the offenses identified in subsection L do not require a showing of any form of bodily injury. . . . Subsection L's inclusion of such offenses indicates that the type of 'serious injury' supporting termination of parental rights does not require 'bodily injury' nor is it synonymous with 'serious bodily injury,' as defined in the Penal Code."

In re Castillo, 101 S.W.3d 174 (Tex. App.—Amarillo 2003, pet. denied). When a trial court did not make specific findings of fact under former subsection 161.001(1)(L), now 160.001(b)(1)(L), the undisputed evidence of appellant's conviction for the murder of one of his children was sufficient to support an implied finding by the trial court under subsection 161.001(1)(L).

Sec. 161.001(b)(1)(M): "had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state"

In re J.D.S., No. 10-15-00217-CV, 2015 WL 6437722 (Tex. App.—Waco 2015, no pet.). The TDFPS filed to terminate the mother's rights to a child based on a prior termination of rights to another child under subsection 161.001(b)(1)(M). Under this ground, the TDFPS was required to prove that the prior termination was based on either a finding of endangering conduct (E) or endangering environment (D). The mother failed to challenge the trial court's finding that termination was in the child's best interest. The court of appeals affirmed the termination.

Sec. 161.001(b)(1)(N): "constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months"

Earvin v. Texas Dep't of Family & Protective Services, 229 S.W.3d 345 (Tex. App.—Houston [1st Dist.] 2007, no pet.). To support termination of parental rights under former subsection 161.001(1)(N), now 161.001(b)(1)(N), the party seeking termination must prove each element of that subsection by clear and convincing evidence.

In re D.T., 34 S.W.3d 625 (Tex. App.—Fort Worth 2000, pet. denied). "It has long been settled that imprisonment, standing alone, does not constitute 'abandonment' of a child for purposes of termination of parental rights."

Sec. 161.001(b)(1)(O): "failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or tempo-

rary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child"

In re K.N.D., 424 S.W.3d 8 (Tex. 2014) (per curiam). Addressing what constitutes removal for abuse or neglect of the child under Tex. Fam. Code ch. 262, the supreme court held that a reviewing court may examine a parent's history with other children as a factor of the risks or threats of the environment.

In re E.C.R., 402 S.W.3d 239, 248 (Tex. 2013). "While subsection O requires removal under chapter 262 for abuse or neglect, those words are used broadly. Consistent with chapter 262's removal standards, 'abuse or neglect of the child' necessarily includes the risks or threats of the environment in which the child is placed. Part of that calculus includes the harm suffered or the danger faced by other children under the parent's care. If a parent has neglected, sexually abused, or otherwise endangered her child's physical health or safety, such that initial and continued removal are appropriate, the child has been 'remov[ed] from the parent under Chapter 262 for the abuse or neglect of the child.'"

In re D.G., No. 02-17-00332-CV, 2018 WL 547787 (Tex. App.—Fort Worth Jan. 25, 2018, no pet.) (mem. op.). The court of appeals held that the trial court could not have reasonably formed a firm conviction or belief that the TDFPS provided clear and convincing evidence to support the finding that the father had failed to comply with the provision of a court order that specifically established the actions necessary for the father to obtain the return of the child because the TDFPS never served the service plan on the father. The court also held that even if the father was charged with notice of the service plan after he filed his answer, he was not given a reasonable opportunity to comply before trial started three months later.

In re D.R.A., 374 S.W.3d 528 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Former subsection 161.001(1)(O), now 161.001(b)(1)(O), does not require that the parent who failed to comply with a court order be the same parent whose abuse or neglect of the child warranted the child's removal.

In re B.L.R.P., 269 S.W.3d 707 (Tex. App.—Amarillo 2008, no pet.). To support termination of parental rights under former subsection 161.001(1)(O), now 161.001(b)(1)(O), there must be an underlying court order. "An order is defined as 'a mandate; precept; command or direction authoritatively given; rule or regulation.' Direction of court or judge made or entered in writing, and not included in a judgment, which determines some point or directs some step in the proceedings." When there are no court orders specifically establishing the actions necessary for the parent to obtain the return of the child, written or otherwise, the TDFPS cannot establish termination under this subsection by clear and convincing evidence.

In re S.A.S., 200 S.W.3d 823 (Tex. App.—Beaumont 2006, pet. denied). Former subsection 161.001(1)(O), now 161.001(b)(1)(O), is not facially unconstitutional because the mother whose parental rights were terminated did not show that the statute always operates in an unconstitutional matter. The fact that the TDFPS could possibly develop family service plan requirements that were excessive or unreasonable did not render the statute facially unconstitutional.

In re Verbois, 10 S.W.3d 825 (Tex. App.—Waco 2000, orig. proceeding). The privilege against self-incrimination must be asserted on a question-by-question basis. Here, parents impermissibly made a blanket assertion of the self-incrimination privilege when they argued that complying with a service plan that required a psychological evaluation would force them to choose between self-incrimination and the possibility of the termination under former subsection 161.001(1)(O), now 161.001(b)(1)(O).

Sec. 161.001(b)(1)(P): "used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and: (i) failed to complete a court-ordered substance abuse treatment program; or (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance"

In re N.J.H., ___ S.W.3d ___, No. 01-18-00564-CV, 2018 WL 6617360 (Tex. App.—Houston [1st Dist.] Dec. 18, 2018, pet. denied) (Brown, J., concurring) (mem. op.). "[R]eliance on marijuana use—without accompanying evidence of impairment or some other circumstance that risks a child's health or safety—to show that a parent has engaged in a course of endangering conduct under Section 161.001(b)(1)(E) . . . is not what the statute requires. And that decision-making fails to consider that there has been a sea change in society's acceptance of limited marijuana use. It may no longer be warranted to presume that marijuana use, by itself, indicates parental neglect or endangerment. . . . [C]ourts should, under Section 161.001(b)(1)(E)'s endangerment predicate, examine whether the use endangered or created a

risk of physical or emotional harm to the child under the facts of the case. After all, the statute does not list drug use itself as a ground for termination; termination is authorized only when the drug is used in an endangering manner. There was no evidence in this case, nor in many of the other termination appeals before our Court, regarding the physical effects of recreational marijuana use or whether the use or any pattern of use actually endangered the child. A parent's 'interest in the accuracy and justice of the decision to terminate his or her parental status is . . . a commanding one.' To terminate parental rights or deprive a parent of access to his or her child based on endangerment absent evidence that marijuana use has actually caused or is causing a risk of harm does not satisfy the strict standards that apply in these cases."

Sec. 161.001(b)(1)(Q): "knowingly engaged in criminal conduct that has resulted in the parent's: (i) conviction of an offense; and (ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition"

In re A.V., 113 S.W.3d 355, 360 (Tex. 2003) (citations omitted). In former subsection 161.001(1)(Q), now 161.001(b)(1)(Q), "the Legislature does not express that the two-year imprisonment must have occurred before the filing date. Nor is there any indication that the Legislature meant anything other than what it said. The bill analysis discussing the addition of subsection Q states only that the purpose behind adding that subsection was to 'expand the reasons why a court may order termination.' We accordingly disagree with the court of appeals' holding that subsection Q should be read retrospectively. It is to be read prospectively. We also disapprove of the courts of appeals' decisions that applied subsection Q retrospectively."

In re J.G.S., ___ S.W.3d ___, No. 01-18-00844-CV, 2019 WL 1199521 (Tex. App.—Houston [1st Dist.] Mar. 14, 2019, no pet. h.). Father's conviction on various sexual assault charges was reversed on appeal, and he remained confined pending retrial. The court of appeals declined to opine as to whether a conviction reversed for retrial meets the requirements of a conviction under subsection (Q). Instead, the court found that under the circumstances of this case, the mother met her burden under subsection (Q) because the father had been confined for more than two years following a conviction prior to the mother filing the termination petition.

In re H.O., 555 S.W.3d 245 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). Evidence supported finding that the father knowingly engaged in criminal conduct that resulted in a conviction and confinement for not less than two years from the date the termination of parental rights petition was filed. While the father presented evidence that he would be eligible for parole quickly, due to credit for time served, parole decisions are highly speculative and could not be relied upon. Further, once TDFPS has established that a parent's knowing criminal conduct has resulted in his incarceration for more than two years, the burden of production shifts to the parent to produce some evidence as to how he would provide or arrange to provide care for the child during that period pursuant to the statute allowing termination of a parent-child relationship, and the father failed to present evidence as to how he would arrange to provide care for the child while he was incarcerated.

In re A.R., No. 06-15-00056-CV (Tex. App.—Texarkana Nov. 9, 2015, no pet.). The TDFPS filed suit to terminate the father's rights based on knowingly engaging in criminal conduct (DWI) that resulted in that parent's incarceration for a period of not less than two years, rendering the father unable to care for the child. Because a DWI conviction is a strict liability offense and does not require mental culpability, the court cannot terminate under this section unless the TDFPS established evidence that the father "knowingly engaged" in the criminal conduct.

In re D.R.L.M., 84 S.W.3d 281 (Tex. App.—Fort Worth 2002, pet. denied). "[T]he legislature intended for the not-less-than-two-years language to modify both the parent's confinement or imprisonment and the parent's inability to care for the child."

In re I.V., 61 S.W.3d 789 (Tex. App.—Corpus Christi 2001, no pet.), *disapproved on other grounds, In re J.F.C.*, 96 S.W.3d 256 (Tex. 2002). "We interpret [subsection 161.001(b)(1)(Q)] to mean that a person's parental rights may be terminated if the person knowingly engages in criminal conduct that results in his imprisonment and he is unable to care for the child for at least two years from the date the termination petition is filed."

In re Caballero, 53 S.W.3d 391 (Tex. App.—Amarillo 2001, pet. denied). Former subsection 161.001(1)(Q), now 161.001(b)(1)(Q), requires proof of a parent's conviction, incarceration and inability to care for a child for at least two years from the date of the filing of the petition for termination. Consequently, once the TDFPS proves "a parent's knowing criminal conduct resulting in their incarceration for more than two years, the parent must produce some evidence as to how they would provide or arrange to provide care for the child during that period. When this burden of production is met, the Department would have the burden of persuasion that the arrangement would not satisfy the parent's duty to the child."

In re D.T., 34 S.W.3d 625 (Tex. App.—Fort Worth 2000, pet. denied). "Because the Legislature specified a minimum period of imprisonment of two years from the date of filing the petition, it is reasonable to assume that the Legislature intended that imprisonment for less than that length of time would be insufficient, standing alone, to support involuntary termination."

Sec. 161.001(b)(1)(T): been convicted of murder of the other parent, attempted murder of the other parent or solicitation to murder the other parent

In re E.M.N., 221 S.W.3d 815 (Tex. App.—Fort Worth 2007, no pet.). A parent was convicted in 2004 for the murder of a child's other parent; subsection (T) was enacted in 2005. The convicted parent argued that the application of subsection (T) was improper as an ex post facto law in violation of Tex. Const. art. I, § 16. The court held that subsection (T) was not enacted to add additional punishment "but to safeguard the public welfare and advance the public interest by facilitating termination when one parent murders the other —an act previously used to support terminations under subsection (E)." The convicted parent could not claim surprise under these circumstances.

Sec. 161.001(b)(2): best interest

In re A.C., 560 S.W.3d 624 (Tex. 2018). The Texas Supreme Court concluded that a mediated settlement agreement in which the parent agreed to termination of the parent-child relationship and stipulated that termination was in the best interest of her children constituted legally and factually sufficient evidence that termination was in the children's best interest.

In re K.S.L., 538 S.W.3d 107 (Tex. 2017). In resolving a split of authority among courts of appeal, the Texas Supreme Court held that in ordinary cases, a sworn, voluntary, and knowing relinquishment of parental rights, where the parent expressly attests that termination is in the child's best interest, satisfies the requirement that the trial court's best-interest finding be supported by clear and convincing evidence. A parent's willingness to voluntarily give up his or her child, and to swear affirmatively that this is in the child's best interest, is sufficient, absent unusual or extenuating circumstances, to produce a firm belief or conviction that the child's best interest is served by termination. While a statutorily compliant affidavit of relinquishment is not always sufficient, by itself, to support a best-interest finding, in the ordinary case it is ample evidence to support a best-interest determination.

Holley v. Adams, 544 S.W.2d 367 (Tex. 1976). "An extended number of factors have been considered by the courts in ascertaining the best interest of the child. Included among these are the following: (A) the desires of the child; (B) the emotional and physical needs of the child now and in the future; (C) the emotional and physical danger to the child now and in the future; (D) the parental abilities of the individuals seeking custody; (E) the programs available to assist these individuals to promote the best interest of the child; (F) the plans for the child by these individuals or by the agency seeking custody; (G) the stability of the home or proposed placement; (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (I) any excuse for the acts or omissions of the parent. This listing is by no means exhaustive, but does indicate a number of considerations which either have been or would appear to be pertinent."

In re A.R.O., 556 S.W.3d 903 (Tex. App.—El Paso 2018, no pet.). Sufficient evidence established that it was in the child's best interest to terminate the mother's parental rights; the child indicated that she wanted to stay with her foster family and referred to those parents as "mom" and "dad"; the mother engaged in conduct that endangered the physical and emotional well-being of the child; there was testimony from a psychologist recommending that the child remain with the foster family; the mother failed to take the initiative to utilize available programs to assist and promote the child's best interest; the mother had an ill-defined plan to continue living in shelters; and the mother failed to provide a safe and stable home environment for the child.

In re B.R., 456 S.W.3d 612 (Tex. App.—San Antonio 2015, no pet.). For the court to terminate a parent's rights, there must be clear and convincing evidence of both a statutory ground (subsection 161.001(b)(1)) and best interest of the child (subsection 161.001(b)(2)).

In re C.L., 322 S.W.3d 889 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). Any excuse for failing to provide support, such as using the money for another purpose, is irrelevant in assessing a violation under former subsection 161.001(1)(F), now 161.001(b)(1)(F). However, failure to support according to ability can be considered by the trial court as a factor in determining the best interest of the child.

In re J.H.G., 313 S.W.3d 894 (Tex. App.—Dallas 2010, no pet.). Sufficient evidence supported the trial court's finding that termination would be in the child's best interest when the parent and child were not bonded and the parent had no family or support system to help. Further, the parent did comply with most provisions of a service plan. Although

she made improvements at the beginning, the parent regressed after six months into her services and no longer made improvements.

In re S.R.L., 243 S.W.3d 232 (Tex. App.—Houston [14th Dist.] 2007, no pet.). "We also conclude the evidence is factually insufficient to support a best interest finding. That a parent is imprisoned does not automatically establish that termination of parental rights is in the child's best interest. Though appellant has a violent and unstable past, he presented substantial and uncontradicted evidence that he has turned his life around. He took anger management classes, which helped him change his attitude about conflicts and keep him out of fights in prison. He complied with all portions of the service plan possible in prison. Appellant developed job skills and has a home and family support structure in place to help him upon release. Given this evidence of changes in appellant's life and the judge's finding that appellant has never 'done anything bad' to these children, we conclude the evidence is factually insufficient for the trial court to have formed a firm conviction or belief that terminating appellant's parental rights is in the children's best interest."

In re S.T., 127 S.W.3d 371 (Tex. App.—Beaumont 2004, no pet.). In the context of a parental-rights termination proceeding, "in determining a child's best interest, a jury may consider the current and future physical and emotional needs of the child, the current and future physical and emotional danger the child may confront with the parent, and the parental abilities of the individual seeking custody. The current and future needs of the children include being provided with a safe, stable, clean, and nurturing home environment."

In re M.A.N.M., 75 S.W.3d 73 (Tex. App.—San Antonio 2002, no pet.). "There is a strong presumption that the best interests of a child are usually served by retaining custody in the natural parents, and the termination of parental rights cannot be justified without the most solid and substantial reasons. However, the need for permanence is the paramount consideration for the child's present and future physical and emotional needs. The goal of establishing a stable, permanent home for a child is a compelling government interest."

Sec. 161.001(c): evidence that cannot support a termination finding

In re G.R.B., ___ S.W.3d ___, No. 04-18-00271-CV, 2018 WL 4903059 (Tex. App.—San Antonio Oct. 10, 2018, pet. denied). Statute precluding termination of a parent's rights based upon declining immunization for the child for reasons of conscience, including religious belief, did not apply retroactively, and thus statute could not serve as a basis for reversal of the trial court's termination of the mother's parental rights where the legislature expressly admonished that the statute was inapplicable to suits filed before September 1, 2017.

RESOURCES

Valeria Lee Brock, *Beyond D&E—A Look at the Other 18 Grounds for Termination*, Adv. Fam. L. (2011).

Warren Cole, *Drafting Termination and Adoption Issues*, Adv. Fam. L. (2008).

Heidi Bruegel Cox, *Adoption Issues: Tips for the Lawyer, Adoption and The Paternity Registry*, Adv. Fam. L. (2008).

Heidi Bruegel Cox & Ellen A. Yarrell, *Selected Issues in Parentage and Termination: What Does Every Lawyer Need to Know?* Adv. Fam. L. 2010 (2010).

Duke Hooten, Luisa P. Marrero, Michael Shulman & Trevor A. Woodruff, *Termination Case Law Update*, Adv. Fam. L. (2010).

Mark Strasser, *The Often Illusory Protections of "Biology Plus:" On the Supreme Court's Parental Rights Jurisprudence*, 13 Tex. J. on C.L. & C.R. 31 (2007).

Linda B. Thomas & Ardita L. Vick, *Family Law: Parent and Child*, 62 SMU L. Rev. 1197 (2009).

Janet McCullar Vavra, *Termination and Step-Parent Adoption*, Adv. Fam. L. Drafting (2010).

Elizabeth Mills Viney, *The Right to Counsel in Parental-Rights Termination Cases: How a Clear and Consistent Legal Standard Would Better Protect Indigent Families*, 63 SMU L. Rev. 1403 (Fall 2010) .

Ellen A. Yarrell, *Termination and Adoption Workshop Frequently Asked Questions About Termination and Adoption Issues*, Adv. Fam. L. (2008).

Sec. 161.002. TERMINATION OF THE RIGHTS OF AN ALLEGED BIOLOGICAL FATHER

(a) Except as otherwise provided by this section, the procedural and substantive standards for termination of parental rights apply to the termination of the rights of an alleged father.

(b) The rights of an alleged father may be terminated if:

(1) after being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under Chapter 160;

(2) the child is over one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed, he has not registered with the paternity registry under Chapter 160, and after the exercise of due diligence by the petitioner:

(A) his identity and location are unknown; or

(B) his identity is known but he cannot be located;

(3) the child is under one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed and he has not registered with the paternity registry under Chapter 160; or

(4) he has registered with the paternity registry under Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful, despite the due diligence of the petitioner.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 1.203(2), eff. April 2, 2015.

(c–1) The termination of the rights of an alleged father under Subsection (b)(2) or (3) rendered on or after January 1, 2008, does not require personal service of citation or citation by publication on the alleged father, and there is no requirement to identify or locate an alleged father who has not registered with the paternity registry under Chapter 160.

(d) The termination of rights of an alleged father under Subsection (b)(4) does not require service of citation by publication on the alleged father.

(e) The court shall not render an order terminating parental rights under Subsection (b)(2) or (3) unless the court receives evidence of a certificate of the results of a search of the paternity registry under Chapter 160 from the vital statistics unit indicating that no man has registered the intent to claim paternity.

(f) The court shall not render an order terminating parental rights under Subsection (b)(4) unless the court, after reviewing the petitioner's sworn affidavit describing the petitioner's effort to obtain personal service of citation on the alleged father and considering any evidence submitted by the attorney ad litem for the alleged father, has found that the petitioner exercised due diligence in attempting to obtain service on the alleged father. The order shall contain specific findings regarding the exercise of due diligence of the petitioner.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 66, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 821, Sec. 2.16, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1090, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 4, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.079, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.203(2), eff. April 2, 2015.

COMMENTS

Termination of a man's parental rights based on his failure to register with the paternity registry is based on the concept that a man is deemed to know that a pregnancy could occur if there is sexual intercourse. This section is intended to protect the rights of a man who has had a relationship with a mother who may not have divulged the pregnancy to him. Some courts still require some basic information on why the birth mother doesn't reveal the man's name; however, the law permits a court to grant a termination absent notice.

PRACTICE TIPS

The practitioner should note that the registry has a three-day mail rule. When checking the registry thirty days after birth, add the three days to make sure there is no filing post thirty days. In the event there is a match, the practitioner is required to send notice to the registrant with citation at the address provided in the registration.

ANNOTATIONS

In re Baby Girl S., 353 S.W.3d 589 (Tex. App.—Dallas 2011, no pet.). A restricted appeal was not available to a man whose rights were terminated based on his failure to register with the paternity registry, because he was not a party to the underlying suit.

In re C.M.D., 287 S.W.3d 510 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Allowing for the termination of an alleged father's parental rights without notice when he fails to timely register with the Texas paternity registry is constitutional. "An unwed father does not automatically have full constitutional paternal rights by virtue of a mere biological relationship. Rather, he must, early in the child's life, take some action to assert those rights."

Toliver v. Texas Dep't of Family & Protective Services, 217 S.W.3d 85 (Tex. App.—Houston [1st Dist.] 2006, no pet.). "Subsection 161.002(b)(1) allows a trial court to 'summarily terminate' the rights of an alleged biological father who does not assert his paternity by filing an admission of paternity or a counterclaim for paternity. However, by filing an admission or counterclaim for paternity, the alleged father is given the right to require the State to prove by clear and convincing evidence that he engaged in one of the types of conduct listed in [subsection 161.001(b)(1)] and that termination is in the best interest of the child."

In re K.W., 138 S.W.3d 420 (Tex. App.—Fort Worth 2004, pet. denied). Sending informal letters to both the Texas Department of Protective and Regulatory Services (TDPRS) (now the Texas Department of Family and Protective Services), and a trial court asserting paternity of a child, objecting to termination and acknowledging an intent to pursue visitation constituted admissions of paternity sufficient to put TDPRS and the trial court on notice that a father admitted his paternity and opposed termination.

In re R.B., No. 14-17-00238-CV, 2017 WL 3567905 (Tex. App.—Houston [14th Dist.] Aug. 17, 2017, no pet.) (mem. op.). In a termination suit brought by TDFPS, alleged father filed a general denial and child was placed with a paternal uncle. The court of appeals noted that, while there are no formalities that must be observed for an admission of paternity to be effective, in this case, alleged father made no representation of paternity in the trial court and at no time admitted or consented to paternity. Thus, the court of appeals found there was sufficient evidence to support the trial court's termination of the father's parental rights under section 161.002(b)(1).

RESOURCES

Heidi Bruegel Cox, *Adoption Issues: Tips for the Lawyer, Adoption and The Paternity Registry*, Adv. Fam. L. (2008).

Mark Strasser, *The Often Illusory Protections of "Biology Plus:" On the Supreme Court's Parental Rights Jurisprudence*, 13 Tex. J. on C.L. & C.R. 31 (Fall 2007).

Sec. 161.003. INVOLUNTARY TERMINATION: INABILITY TO CARE FOR CHILD

(a) The court may order termination of the parent-child relationship in a suit filed by the Department of Family and Protective Services if the court finds that:

(1) the parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;

(2) the illness or deficiency, in all reasonable probability, proved by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child;

(3) the department has been the temporary or sole managing conservator of the child of the parent for at least six months preceding the date of the hearing on the termination held in accordance with Subsection (c);

(4) the department has made reasonable efforts to return the child to the parent; and

(5) the termination is in the best interest of the child.

(b) Immediately after the filing of a suit under this section, the court shall appoint an attorney ad litem to represent the interests of the parent against whom the suit is brought.

(c) A hearing on the termination may not be held earlier than 180 days after the date on which the suit was filed.

(d) An attorney appointed under Subsection (b) shall represent the parent for the duration of the suit unless the parent, with the permission of the court, retains another attorney.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 67, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 496, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1090, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.080, eff. April 2, 2015.

ANNOTATIONS

In re E.R., 555 S.W.3d 796 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Clear and convincing evidence supported a finding in termination of parental rights proceeding, that the mother had a mental deficiency that would probably continue to render her unable to meet her minor child's needs until his eighteenth birthday; the psychologist who evaluated the mother opined that she did not have the intellectual capacity to function as a parent and was not likely to improve given her lifelong intellectual disability under subsection 161.003(a)(2).

In re R.M.T., 352 S.W.3d 12 (Tex. App.—Texarkana 2011, no pet.). A court did not deny a father due process by failing to grant a continuance until the father regained his mental competency. There is no Texas authority which would permit a trial court to halt termination proceedings due to the incompetency of the parent.

In re A.L.M., 300 S.W.3d 914 (Tex. App.—Texarkana 2009, no pet.). "When the evidence is less convincing of the parent's complete inability to parent, appellate courts are still willing to affirm termination on the ground [under section 161.003] when the evidence establishes special, extensive medical or emotional needs of the children. Other cases make little or no mention of the specific needs of the child when evidence of the mental illness or deficiency make it clear that the parent is unable to meet the needs of a child without severe problems. The needier the child, the more able the parent must be."

Liu v. Department of Family & Protective Services, 273 S.W.3d 785 (Tex. App.—Houston [1st Dist.] 2008, no pet.). "Mental illness of a parent is not, in and of itself, grounds for termination of the parent-child relationship. . . . DFPS need not prove with certainty that the parent's mental disease will continue to render the parent unable to provide for the child's needs until the child's 18th birthday; rather, DFPS must show, by clear and convincing evidence, that the mental illness in all probability will do so. 'In all reasonable probability' does not mean beyond a reasonable doubt and does not require 'scientific certainty' that the parent's mental illness will continue until the child is 18."

In re B.L.M., 114 S.W.3d 641 (Tex. App.—Fort Worth 2003, no pet.). A trial court properly terminated a father's parental rights under this section when the father had paranoid schizophrenia and was not appropriately treating the illness.

Sec. 161.004. TERMINATION OF PARENTAL RIGHTS AFTER DENIAL OF PRIOR PETITION TO TERMINATE

(a) The court may terminate the parent-child relationship after rendition of an order that previously denied termination of the parent-child relationship if:

(1) the petition under this section is filed after the date the order denying termination was rendered;

(2) the circumstances of the child, parent, sole managing conservator, possessory conservator, or other party affected by the order denying termination have materially and substantially changed since the date that the order was rendered;

(3) the parent committed an act listed under Section 161.001 before the date the order denying termination was rendered; and

(4) termination is in the best interest of the child.

(b) At a hearing under this section, the court may consider evidence presented at a previous hearing in a suit for termination of the parent-child relationship of the parent with respect to the same child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re A.A.M., 464 S.W.3d 421 (Tex. App.—Houston [1st Dist.] 2015, no pet.). The court of appeals found that the circumstances of the child and the parents had significantly changed since the prior order denying termination of parental rights. Therefore, evidence of endangering conduct from the prior suit was admissible.

In re K.G., 350 S.W.3d 338 (Tex. App.—Fort Worth 2011, pet. denied). Even though the trial court erred by admitting evidence from before the initial denial of a petition for termination, the error was harmless because the TDFPS properly proved a ground for termination under section 161.001. The court of appeals disagreed that the only way the trial court could terminate parental rights was under section 161.004. Rather, using section 161.004 is the only way that the trial court could terminate parental rights based upon "evidence presented at" the hearing before the trial court issued its denial of the first petition to terminate.

In re T.V., 27 S.W.3d 622 (Tex. App.—Waco 2000, no pet.). The legislature passed this section in response to the concern created by in *Slatton v. Brazoria County Protective Services Unit*, 804 S.W.2d 550 (Tex. App.—Texarkana 1991, no writ), which applied the doctrine of res judicata and collateral estoppel to an order denying termination of parental rights.

Sec. 161.005. TERMINATION WHEN PARENT IS PETITIONER

(a) A parent may file a suit for termination of the petitioner's parent-child relationship. Except as provided by Subsection (h), the court may order termination if termination is in the best interest of the child.

(b) If the petition designates the Department of Family and Protective Services as managing conservator, the department shall be given service of citation. The court shall notify the department if the court appoints the department as the managing conservator of the child.

(c) Subject to Subsection (d), a man may file a suit for termination of the parent-child relationship between the man and a child if, without obtaining genetic testing, the man signed an acknowledgment of paternity of the child in accordance with Subchapter D, Chapter 160, or was adjudicated to be the father of the child in a previous proceeding under this title in which genetic testing did not occur. The petition must be verified and must allege facts showing that the petitioner:

(1) is not the child's genetic father; and

(2) signed the acknowledgment of paternity or failed to contest parentage in the previous proceeding because of the mistaken belief, at the time the acknowledgment was signed or on the date the court order in the previous proceeding was rendered, that he was the child's genetic father based on misrepresentations that led him to that conclusion.

(d) A man may not file a petition under Subsection (c) if:

(1) the man is the child's adoptive father;

(2) the child was conceived by assisted reproduction and the man consented to assisted reproduction by his wife under Subchapter H, Chapter 160; or

(3) the man is the intended father of the child under a gestational agreement validated by a court under Subchapter I, Chapter 160.

(e) A petition under Subsection (c) must be filed not later than the second anniversary of the date on which the petitioner becomes aware of the facts alleged in the petition indicating that the petitioner is not the child's genetic father.

(f) In a proceeding initiated under Subsection (c), the court shall hold a pretrial hearing to determine whether the petitioner has established a meritorious prima facie case for termination of the parent-child relationship. If a meritorious prima facie claim is established, the court shall order the petitioner and the child to submit to genetic testing under Subchapter F, Chapter 160.

(g) If the results of genetic testing ordered under Subsection (f) identify the petitioner as the child's genetic father under the standards prescribed by Section 160.505 and the results of any further testing requested by the petitioner and ordered by the court under Subchapter F, Chapter 160, do not exclude the petitioner as the child's genetic father, the court shall deny the petitioner's request for termination of the parent-child relationship.

(h) If the results of genetic testing ordered under Subsection (f) exclude the petitioner as the child's genetic father, the court shall render an order terminating the parent-child relationship.

(i) An order under Subsection (h) terminating the parent-child relationship ends the petitioner's obligation for future support of the child as of the date the order is rendered, as well as the obligation to pay interest that accrues after that date on the basis of a child support arrearage or money judgment for a child support arrearage existing on that date. The order does not affect the petitioner's obligations for support of the child incurred before that date. Those obligations are enforceable until satisfied by any means available for the enforcement of child support other than contempt.

(j) An order under Subsection (h) terminating the parent-child relationship does not preclude:

(1) the initiation of a proceeding under Chapter 160 to adjudicate whether another man is the child's parent; or

(2) if the other man subject to a proceeding under Subdivision (1) is adjudicated as the child's parent, the rendition of an order requiring that man to pay child support for the child under Chapter 154, subject to Subsection (k).

(k) Notwithstanding Section 154.131, an order described by Subsection (j)(2) may not require the other man to pay retroactive child support for any period preceding the date on which the order under Subsection (h) terminated the parent-child relationship between the child and the man seeking termination under this section.

(l) At any time before the court renders an order terminating the parent-child relationship under Subsection (h), the petitioner may request that the court also order periods of possession of or access to the child by the petitioner following termination of the parent-child relationship. If requested, the court may order periods of possession of or access to the child only if the court determines that denial of peri-

ods of possession of or access to the child would significantly impair the child's physical health or emotional well-being.

(m) The court may include provisions in an order under Subsection (l) that require:

(1) the child or any party to the proceeding to participate in counseling with a mental health professional who:

(A) has a background in family therapy; and

(B) holds a professional license that requires the person to possess at least a master's degree; and

(2) any party to pay the costs of the counseling described by Subdivision (1).

(n) Notwithstanding Subsection (m)(1), if a person who possesses the qualifications described by that subdivision is not available in the county in which the court is located, the court may require that the counseling be conducted by another person the court considers qualified for that purpose.

(o) During any period of possession of or access to the child ordered under Subsection (l) the petitioner has the rights and duties specified by Section 153.074, subject to any limitation specified by the court in its order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 68, eff. Sept. 1, 1995. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 54 (S.B. 785), Sec. 2, eff. May 12, 2011. Acts 2013, 83rd Leg., R.S., Ch. 227 (H.B. 154), Sec. 1, eff. June 14, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.081, eff. April 2, 2015.

ANNOTATIONS

In re C.E., 391 S.W.3d 200 (Tex. App.—Houston [1st Dist.] 2012, no pet.). A verified petition alleging that a misrepresentation caused a man to believe that he was a biological father to a child, which was not challenged by a verified denial or answer, coupled with circumstantial evidence that the mother made a misrepresentation of paternity, constituted a prima facie case for genetic testing under subsection 161.005(c).

Dockery v. State, No. 03-05-00713-CV, 2006 WL 3329794 (Tex. App.—Austin Nov. 14, 2006, pet. denied) (mem. op.). A trial court properly denied a petition for termination when the father acknowledged paternity, stated his reason for seeking termination was to eliminate child support arrearages, and offered limited evidence to support that termination would be in the child's best interest, even when the child was 19 years old at the time of hearing. A parent must prove that termination is in a child's best interest even when the child is over 18 years old.

RESOURCES

Janet McCullar Vavra, *Termination and Step-Parent Adoption*, Adv. Fam. L. Drafting (2010).

Sec. 161.006. TERMINATION AFTER ABORTION

(a) A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the child was born alive as the result of an abortion.

(b) In this code, "abortion" has the meaning assigned by Section 245.002, Health and Safety Code.

(c) The court or the jury may not terminate the parent-child relationship under this section with respect to a parent who:

(1) had no knowledge of the abortion; or

(2) participated in or consented to the abortion for the sole purpose of preventing the death of the mother.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 2, eff. Sept. 1, 2017.

Sec. 161.007. TERMINATION WHEN PREGNANCY RESULTS FROM CRIMINAL ACT

(a) Except as provided by Subsection (b), the court shall order the termination of the parent-child relationship of a parent and a child if the court finds by clear and convincing evidence that:

(1) the parent has engaged in conduct that constitutes an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;

(2) as a direct result of the conduct described by Subdivision (1), the victim of the conduct became pregnant with the parent's child; and

(3) termination is in the best interest of the child.

(b) If, for the two years after the birth of the child, the parent was married to or cohabiting with the other parent of the child, the court may order the termination of the parent-child relationship of the parent and the child if the court finds that:

(1) the parent has been convicted of an offense committed under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;

(2) as a direct result of the commission of the offense by the parent, the other parent became pregnant with the child; and

(3) termination is in the best interest of the child.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 8, eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.31, eff. September 1, 2007. Acts 2013, 83rd Leg., R.S., Ch. 907 (H.B. 1228), Sec. 4, eff. September 1, 2013.

SUBCHAPTER B. PROCEDURES

Sec. 161.101. PETITION ALLEGATIONS

A petition for the termination of the parent-child relationship is sufficient without the necessity of specifying the underlying facts if the petition alleges in the statutory language the ground for the termination and that termination is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

PRACTICE TIPS

Some courts prefer that the grounds alleged completely recite the exact language of the statute rather than adding fact-specific language. Further, the practitioner should include only those grounds on which there is a reasonable allegation based on clear and convincing evidence.

Sec. 161.102. FILING SUIT FOR TERMINATION BEFORE BIRTH

(a) A suit for termination may be filed before the birth of the child.

(b) If the suit is filed before the birth of the child, the petition shall be styled "In the Interest of an Unborn Child." After the birth, the clerk shall change the style of the case to conform to the requirements of Section 102.008.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.103. AFFIDAVIT OF VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS

(a) An affidavit for voluntary relinquishment of parental rights must be:

(1) signed after the birth of the child, but not before 48 hours after the birth of the child, by the parent, whether or not a minor, whose parental rights are to be relinquished;

(2) witnessed by two credible persons; and

(3) verified before a person authorized to take oaths.

(b) The affidavit must contain:

(1) the name, county of residence, and age of the parent whose parental rights are being relinquished;

(2) the name, age, and birth date of the child;

(3) the names and addresses of the guardians of the person and estate of the child, if any;

(4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) an allegation that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and county of residence of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child has no presumed father;

(8) a statement that the parent has been informed of parental rights and duties;

(9) a statement that the relinquishment is revocable, that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time;

(10) if the relinquishment is revocable, a statement in boldfaced type concerning the right of the parent signing the affidavit to revoke the relinquishment only if the revocation is made before the 11th day after the date the affidavit is executed;

(11) if the relinquishment is revocable, the name and address of a person to whom the revocation is to be delivered; and

(12) the designation of a prospective adoptive parent, the Department of Family and Protective Services, if the department has consented in writing to the designation, or a licensed child-placing agency to serve as managing conservator of the child and the address of the person or agency.

(c) The affidavit may contain:

(1) a waiver of process in a suit to terminate the parent-child relationship filed under this chapter or in a suit to terminate joined with a petition for adoption; and

(2) a consent to the placement of the child for adoption by the Department of Family and Protective Services or by a licensed child-placing agency.

(d) A copy of the affidavit shall be provided to the parent at the time the parent signs the affidavit.

(e) The relinquishment in an affidavit that designates the Department of Family and Protective Services or a licensed child-placing agency to serve as the managing conservator is irrevocable. A relinquishment in any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution.

(f) A relinquishment in an affidavit of relinquishment of parental rights that fails to state that the relinquishment is irrevocable for a stated time is revocable as provided by Section 161.1035.

(g) To revoke a relinquishment under Subsection (e) the parent must sign a statement witnessed by two credible persons and verified before a person authorized to take oaths. A copy of the revocation shall be delivered to the person designated in the affidavit. If a parent attempting to revoke a relinquishment under this subsection has knowledge that a suit for termination of the parent-child relationship has been filed based on the parent's affidavit of relinquishment of parental rights, the parent shall file a copy of the revocation with the clerk of the court.

(h) The affidavit may not contain terms for limited post-termination contact between the child and the parent whose parental rights are to be relinquished as a condition of the relinquishment of parental rights.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 69, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 561, Sec. 3, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 5, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1412 (H.B. 568), Sec. 1, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.082, eff. April 2, 2015.

COMMENTS

Termination of parental rights is considered of constitutional dimensions. Therefore, termination of parental rights must meet the exact statutory requirements set forth in the Family Code. Each executed document must precisely meet the requirements of this section. The Interstate Compact on the Placement of Children regulations can require additional documents concerning the issue of Native American heritage of a birth parent.

PRACTICE TIPS

In every execution of an affidavit, the practitioner should require the signatory to raise his or her right hand and be sworn by the notary. Witnesses should be neutral persons. Attorney office and agency staff are acceptable as neutral witnesses.

ANNOTATIONS

Brown v. McClennan County Children's Protective Services, 627 S.W.2d 390, 394 (Tex. 1982). A waiver of service of process when the waiver is contained in an affidavit for voluntary relinquishment of parental rights is a permissible exception to the general prohibition against presuit waivers. Further, "[c]hildren voluntarily given up in compliance with the Family Code, as was done in this case, cannot be snapped back at the whim of the parent. By these provisions in the Family Code the Legislature was seeking some small amount of security and stability for children placed in this position."

Catholic Charities of the Diocese of Galveston, Inc. v. Harper, 337 S.W.2d 111 (Tex. 1960). "We hold that where the parents have surrendered their child to the custody of an agency licensed by the State Department of Public Welfare to place children for adoption and have given their written consent that such agency may place the child for adoption, that consent is subject to revocation only by proof of fraud, misrepresentation, overreaching and the like."

Vallejo v. Texas Dep't of Family & Protective Services, 280 S.W.3d 917 (Tex. App.—Austin 2009, no pet.). A trial court terminated a father's parental rights on numerous grounds, including the execution of a voluntary relinquishment of parental rights. The court of appeals rejected the father's argument that, because he filed an affidavit of voluntary

relinquishment, the trial court had no authority to make additional findings. The filing of an affidavit of voluntary relinquishment does not end an involuntary termination proceeding or strip the trial court of jurisdiction to assess alternate bases for termination and the best interest of the child.

In re A.G.C., 279 S.W.3d 441 (Tex. App.—Houston [14th Dist.] 2009, no pet.). "Family Code subsection 161.103(b) requires that an affidavit for voluntary relinquishments of paternal rights 'must contain' specific information about the child and the parents, including the designation of a prospective adoptive parent or consenting agency to serve as a managing conservator for the child." However, when there is "a private agreement between the parents in which the child is to remain with the mother and no adoption is contemplated, no designation of anyone else under [subsection 161.103(b)(12)] is necessary."

In re R.B., 225 S.W.3d 798 (Tex. App.—Fort Worth 2007, no pet.). Birth parents "voluntarily, knowingly, and intelligently" signed affidavits of voluntary relinquishment, with full awareness of their legal consequences, when before signing the affidavits they met with their attorneys, their pastor, their pastor's wife, and family members and discussed the "ramifications, finality and magnitude of their decision." The fact that the birth parents might have faced potential criminal charges or the removal of their children did not prove that the affidavits were improperly executed.

Monroe v. Alternatives in Motion, 234 S.W.3d 56 (Tex. App.—Houston [1st Dist.] 2007, no pet.). A parent must sign an affidavit of relinquishment voluntarily, knowingly, intelligently, and with full awareness of its legal consequences because it waives a constitutional right. "The proponent of the affidavit has the burden to establish by clear and convincing evidence that the affidavit was executed according to the terms of section 161.103 of the Family Code. An affidavit of relinquishment in proper form is prima facie evidence of its validity. Once the proponent has met that burden, the burden then shifts to the affiant to establish by a preponderance of the evidence that the affidavit was executed as a result of fraud, duress, or coercion. An involuntarily executed affidavit is a complete defense to a termination decree."

Wall v. Texas Dep't of Family & Protective Services, 173 S.W.3d 178, 181 (Tex. App.—Austin 2005, no pet.). A properly executed affidavit of relinquishment will not be set aside because of defects in form when the affidavit shows intent to name the TDFPS as a child's managing conservator but lacks the "magic words 'managing conservator.'"

In re N.P.T., 169 S.W.3d 677 (Tex. App.—Dallas 2005, pet. denied). There was no merit to a father's argument that he did not voluntarily execute an affidavit of relinquishment of parental rights because he was under pressure to execute it as a portion of a plea bargain in a criminal case on charges of child pornography and indecency with a child when he had legal representation and understood the consequences of the affidavit.

Martinez v. Texas Dep't of Protective & Regulatory Services, 116 S.W.3d 266, 271 (Tex. App.—El Paso 2003, pet. denied). This section "does not create a risk of erroneous deprivation of a constitutionally protected interest because a parent may move to have an affidavit set aside in the event of fraud or other improper procurement of the affidavit. By signing an irrevocable affidavit of relinquishment, [the birth mother] clearly demonstrated her intent to dissolve the bond with her child. At this point, the State had a duty to step in to advance its legitimate and compelling interest in the safety, education, care and protection of the child. When a parent voluntarily terminates the parent-child bond, the best interest of the child become paramount. The State acts to provide the child with minimal stability during this chaotic period. Due process does not require that the child's rights be sacrificed to preserve rights which the parent has waived. The legitimate and compelling state interest in protecting the child in this situation is advanced by giving effect to the express will of the parent. [The birth mother's] execution of the irrevocable affidavit of relinquishment triggered the State's compelling interest in protecting the rights of the child. Consequently, we conclude there is no due process violation."

In re Bruno, 974 S.W.2d 401 (Tex. App.—San Antonio 1998, no pet.). "The fact that a notary public is in the employ of a party to a transaction will not necessarily disqualify her from notarizing a document related to that transaction unless the notary (1) has a direct pecuniary or beneficial interest in the transaction, or (2) identifies herself with the transaction by signing a written instrument as an agent for one of the parties." Further, "there is no requirement that the credibility of the witnesses be affirmatively proven or even that the witnesses be present when the document is signed."

In re R.D.S., 902 S.W.2d 714, 721 (Tex. App.—Amarillo 1995, no writ). Revoking an affidavit of voluntary relinquishment does not strip the document of all probative value. "If the parent truly intended to 'not return' when [he or she] signed the affidavit, the fact that the parent had that intent is frozen. Rescinding the document simply evinces a changed mind. It does not have the effect of creating a time gate through which the parent may travel back and erase established fact. The affidavit remains indicative of the preexisting intent."

Coleman v. Smallwood, 800 S.W.2d 353 (Tex. App.—El Paso 1990, no writ). "The inclusion of minor parents in the provisions of [sections 161.001 and 161.103], without added protection for their minority status, demands strict scrutiny by the courts for the existence of a compelling state interest in establishing such a statutory structure and result. The same standard obtains if we view the affected class of minor parents as a suspect category or 'discrete and insular minority.'"

In re D.E.W., 654 S.W.2d 33, 35 (Tex. App.—Fort Worth 1983, writ ref'd n.r.e.). "There is no requirement that the witnesses be present when the document is signed. It is also well established that the notary need not be physically present at the time the signature is made."

Terrell v. Chambers, 630 S.W.2d 800 (Tex. App.—Tyler 1982, writ ref'd n.r.e.). The court of appeals held that a seventeen-year-old birth mother with a ninth-grade education, whose husband persuaded her that signing the affidavit was the best thing to do and informed her that he would divorce her and that he could not afford to pay her child support, voluntarily executed her affidavit of relinquishment. However, the court held the affidavit void because the prospective adoptive parents' attorney, whom the affidavit also designated as the child's managing conservator, served as the notary. The court found that the attorney had a strong financial and beneficial interest in the affidavit and was disqualified to take the birth mother's affidavit.

S.A.S. v. Catholic Family Services, 613 S.W.2d 540 (Tex. Civ. App.—Amarillo 1981, no writ). A minor may waive service of process when the waiver is contained in an affidavit for voluntary relinquishment of parental rights.

RESOURCES

Warren Cole, *Drafting Termination and Adoption Issues*, Adv. Fam. L. (2008).

Janet McCullar Vavra, *Termination and Step-Parent Adoption*, Adv. Fam. L. Drafting (2010).

Sec. 161.1031. MEDICAL HISTORY REPORT

(a) A parent who signs an affidavit of voluntary relinquishment of parental rights under Section 161.103 regarding a biological child must also prepare a medical history report that addresses the medical history of the parent and the parent's ancestors.

(b) The Department of Family and Protective Services, in cooperation with the Department of State Health Services, shall adopt a form that a parent may use to comply with this section. The form must be designed to permit a parent to identify any medical condition of the parent or the parent's ancestors that could indicate a predisposition for the child to develop the condition.

(c) The medical history report shall be used in preparing the health, social, educational, and genetic history report required by Section 162.005 and shall be made available to persons granted access under Section 162.006 in the manner provided by that section.

Added by Acts 2005, 79th Leg., Ch. 1258 (H.B. 1999), Sec. 1, eff. September 1, 2005.

Sec. 161.1035. REVOCABILITY OF CERTAIN AFFIDAVITS

An affidavit of relinquishment of parental rights that fails to state that the relinquishment or waiver is irrevocable for a stated time is:

(1) revocable only if the revocation is made before the 11th day after the date the affidavit is executed; and

(2) irrevocable on or after the 11th day after the date the affidavit is executed.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 10, eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 6, eff. September 1, 2007.

Sec. 161.104. RIGHTS OF DESIGNATED MANAGING CONSERVATOR PENDING COURT APPOINTMENT

A person, licensed child-placing agency, or the Department of Family and Protective Services designated managing conservator of a child in an irrevocable or unrevoked affidavit of relinquishment has a right to possession of the child superior to the right of the person executing the affidavit, the right to consent to medical, surgical, dental, and psychological treatment of the child, and the rights and duties given by Chapter 153 to a possessory conservator until such time as these rights and duties are modified or terminated by court order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 70, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.083, eff. April 2, 2015.

Sec. 161.106. AFFIDAVIT OF WAIVER OF INTEREST IN CHILD

(a) A man may sign an affidavit disclaiming any interest in a child and waiving notice or the service of citation in any suit filed or to be filed affecting the parent-child relationship with respect to the child.

(b) The affidavit may be signed before the birth of the child.

(c) The affidavit shall be:

(1) signed by the man, whether or not a minor;

(2) witnessed by two credible persons; and

(3) verified before a person authorized to take oaths.

(d) The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the child.

(e) An affidavit of waiver of interest in a child may be used in a suit in which the affiant attempts to establish an interest in the child. The affidavit may not be used in a suit brought by another person, licensed child-placing agency, or the Department of Family and Protective Services to establish the affiant's paternity of the child.

(f) A waiver in an affidavit under this section is irrevocable.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1283, Sec. 13, eff. September 1, 2007.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1283, Sec. 13, eff. September 1, 2007.

(i) A copy of the affidavit shall be provided to the person who executed the affidavit at the time the person signs the affidavit.

(j) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1283, Sec. 13, eff. September 1, 2007.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 11, eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 7, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 13, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.084, eff. April 2, 2015.

Sec. 161.107. MISSING PARENT OR RELATIVE

(a) In this section:

(1) "Parent" means a parent, as defined by Section 160.102, whose parent-child relationship with a child has not been terminated. The term does not include a man who does not have a parent-child relationship established under Chapter 160.

(2) "Relative" means a parent, grandparent, or adult sibling or child.

(b) If a parent of the child has not been personally served in a suit in which the Department of Family and Protective Services seeks termination, the department must make a diligent effort to locate that parent.

(c) If a parent has not been personally served and cannot be located, the department shall make a diligent effort to locate a relative of the missing parent to give the relative an opportunity to request appointment as the child's managing conservator.

(d) If the department is not able to locate a missing parent or a relative of that parent and sufficient information is available concerning the physical whereabouts of the parent or relative, the department shall request the state agency designated to administer a statewide plan for child support to use the parental locator service established under 42 U.S.C. Section 653 to determine the location of the missing parent or relative.

(e) The department shall be required to provide evidence to the court to show what actions were taken by the department in making a diligent effort to locate the missing parent and relative of the missing parent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 71, eff. Sept. 1, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 8, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 9, eff. September 1, 2007.

ANNOTATIONS

In re E.R., 385 S.W.3d 552 (Tex. 2012). Notice by publication of an impending termination of a mother's parental rights violated her due-process rights because the caseworker was not diligent in attempting to ascertain the mother's residence or whereabouts as required by Tex. R. Civ. P 109 and subsection 161.107(b). For purposes of service of process, "a diligent search must include inquiries that someone who really wants to find the defendant would make, and diligence is measured not by the quantity of the search but by its quality." A lack of diligence makes service by publication ineffective.

Sec. 161.108. RELEASE OF CHILD FROM HOSPITAL OR BIRTHING CENTER

(a) Before or at the time an affidavit of relinquishment of parental rights under Section 161.103 is executed, the mother of a newborn child may authorize the release of the child from the hospital or birthing center to a licensed child-placing agency, the Department of Family and Protective Services, or another designated person.

(b) A release under this section must be:

(1) executed in writing;

(2) witnessed by two credible adults; and

(3) verified before a person authorized to take oaths.

(c) A hospital or birthing center shall comply with the terms of a release executed under this section without requiring a court order.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 12, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.085, eff. April 2, 2015.

PRACTICE TIPS

This release may be prepared in advance of the birth with blanks included for the name and date of birth of the child. After the passage of this section, many hospitals and medical practices prepared in-house authorized releases for use when a birth mother chooses to leave the facility before the child's release, usually before 48 hours. This form is extremely helpful in private or independent placements in which an agency is not involved.

Sec. 161.109. REQUIREMENT OF PATERNITY REGISTRY CERTIFICATE

(a) If a parent-child relationship does not exist between the child and any man, a certificate from the vital statistics unit signed by the registrar that a diligent search has been made of the paternity registry maintained by the unit and that a registration has not been found pertaining to the father of the child in question must be filed with the court before a trial on the merits in the suit for termination may be held.

(b) In a proceeding to terminate parental rights in which the alleged or probable father has not been personally served with citation or signed an affidavit of relinquishment or an affidavit of waiver of interest, the court may not terminate the parental rights of the alleged or probable father, whether known or unknown, unless a certificate from the vital statistics unit signed by the registrar states that a diligent search has been made of the paternity registry maintained by the unit and that a filing or registration has not been found pertaining to the father of the child in question.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 12, eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 10, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.086, eff. April 2, 2015.

PRACTICE TIPS

Practitioners should submit the request to check the registry to the Texas Department of State Health Services by mail to Paternity Registry, Vital Statistics Unit, MC 1966, P.O. Box 12040, Austin, Texas 78711-2040 or fax to 512-776-7164. A Paternity Registry Inquiry Request is available online through the Texas Department of State Health Services at **www.dshs.texas.gov**. The original should be attached to the Statement of Evidence submitted to the court at the time of the trial.

SUBCHAPTER C. HEARING AND ORDER

Sec. 161.2011. CONTINUANCE; ACCESS TO CHILD

(a) A parent whose rights are subject to termination in a suit affecting the parent-child relationship and against whom criminal charges are filed that directly relate to the grounds for which termination is sought may file a motion requesting a continuance of the final trial in the suit until the criminal charges are resolved. The court may grant the motion only if the court finds that a continuance is in the best interest of the child. Notwithstanding any continuance granted, the court shall conduct status and permanency hearings with respect to the child as required by Chapter 263 and shall comply with the dismissal date under Section 263.401.

(b) Nothing in this section precludes the court from issuing appropriate temporary orders as authorized in this code.

(c) The court in which a suit to terminate the parent-child relationship is pending may render an order denying a parent access to a child if the parent is indicted for criminal activity that constitutes a ground for terminating the parent-child relationship under Section 161.001. The denial of access under

this section shall continue until the date the criminal charges for which the parent was indicted are resolved and the court renders an order providing for access to the child by the parent.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 61, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 3, eff. Sept. 1, 2001.

Sec. 161.202. PREFERENTIAL SETTING

In a termination suit, after a hearing, the court shall grant a motion for a preferential setting for a final hearing on the merits filed by a party to the suit or by the amicus attorney or attorney ad litem for the child and shall give precedence to that hearing over other civil cases if:

(1) termination would make the child eligible for adoption; and

(2) discovery has been completed or sufficient time has elapsed since the filing of the suit for the completion of all necessary and reasonable discovery if diligently pursued.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 133, Sec. 5, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 19, eff. September 1, 2005.

Sec. 161.2021. MEDICAL HISTORY REPORT

(a) In a termination suit, the court shall order each parent before the court to provide information regarding the medical history of the parent and the parent's ancestors.

(b) A parent may comply with the court's order under this section by completing the medical history report form adopted by the Department of Family and Protective Services under Section 161.1031.

(c) If the Department of Family and Protective Services is a party to the termination suit, the information provided under this section must be maintained in the department records relating to the child and made available to persons with whom the child is placed.

Added by Acts 2005, 79th Leg., Ch. 1258 (H.B. 1999), Sec. 2, eff. September 1, 2005.

Sec. 161.203. DISMISSAL OF PETITION

A suit to terminate may not be dismissed nor may a nonsuit be taken unless the dismissal or nonsuit is approved by the court. The dismissal or nonsuit approved by the court is without prejudice.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 4, eff. Sept. 1, 2001.

Sec. 161.204. TERMINATION BASED ON AFFIDAVIT OF WAIVER OF INTEREST

In a suit for termination, the court may render an order terminating the parent-child relationship between a child and a man who has signed an affidavit of waiver of interest in the child, if the termination is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 5, eff. Sept. 1, 2001.

Sec. 161.205. ORDER DENYING TERMINATION

If the court does not order termination of the parent-child relationship, the court shall:

(1) deny the petition; or

(2) render any order in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 6, eff. Sept. 1, 2001.

ANNOTATIONS

Harris v. Texas Dep't of Family & Protective Services, 228 S.W.3d 819 (Tex. App.—Austin 2007, no pet.). "A trial court that does not terminate a parent's rights in a termination suit must either dismiss the petition or enter an order in the child's best interest. In making its orders, the trial court may not contravene the jury's determination of conservatorship unless the jury's findings are not supported by the evidence."

Sec. 161.206. ORDER TERMINATING PARENTAL RIGHTS

(a) If the court finds by clear and convincing evidence grounds for termination of the parent-child relationship, it shall render an order terminating the parent-child relationship.

(a–1) In a suit filed by the Department of Family and Protective Services seeking termination of the parent-child relationship for more than one parent of the child, the court may order termination of the parent-child relationship for the parent only if the court finds by clear and convincing evidence grounds for the termination of the parent-child relationship for that parent.

(b) Except as provided by Section 161.2061, an order terminating the parent-child relationship divests the parent and the child of all legal rights and duties with respect to each other, except that the child retains the right to inherit from and through the parent unless the court otherwise provides.

(c) Nothing in this chapter precludes or affects the rights of a biological or adoptive maternal or paternal grandparent to reasonable access under Chapter 153.

(d) An order rendered under this section must include a finding that:

(1) a request for identification of a court of continuing, exclusive jurisdiction has been made as required by Section 155.101; and

(2) all parties entitled to notice, including the Title IV-D agency, have been notified.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 72, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 561, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 44, eff. September 1, 2007. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 13, eff. Sept. 1, 2017.

ANNOTATIONS

Texas Dep't of Human Services v. E.B., 802 S.W.2d 647 (Tex. 1990). Jury charges in termination-of-parental-rights cases should be the same as in other civil cases. A broad-form, or global, question asking whether parental rights should be terminated is proper. The inclusion of independent grounds for termination is not required.

Durham v. Barrow, 600 S.W.2d 756 (Tex. 1980). Plaintiffs, the biological mother and a guardian ad litem for two children in a prior suit, sought a bill of review to set aside the adoption of the children and return the children to the biological mother. Plaintiffs had received no notice of the adoption suit. The Texas Supreme Court held that the petition for bill of review attacked both the termination decree and the adoption and that both the mother and the guardian ad litem had standing to maintain the bill of review to set aside the termination judgment. The court also held that the guardian ad litem had no standing to maintain a bill of review regarding the adoption because the children were not necessary

parties to the adoption suit and that the biological mother had standing to pursue the bill of review against the adoption only if the trial court set aside the termination decree.

Colbert v. Department of Family & Protective Services, 227 S.W.3d 799 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). The findings that this section requires, which state the grounds for termination under section 161.001, are not "findings of fact" prohibited by Tex. R. Civ. P. 299a.

In re H.M.M., 230 S.W.3d 204 (Tex. App.—Houston [14th Dist.] 2006, no pet.). After the termination of her parental rights, a biological mother appealed the trial court's order that declined to appoint the child's father as sole managing conservator and retained the child under the conservatorship of the TDFPS. The biological mother did not appeal the termination of her parental rights. Therefore, she lacked standing to maintain her appeal because she had been divested of all legal rights to the child.

Swate v. Swate, 72 S.W.3d 763 (Tex. App.—Waco 2002, pet. denied). An order terminating a father's parental rights did not absolve him from payment of child support arrearages that accumulated up until the time of termination. Termination of the other parent's parental rights does not foreclose a parent from attempting to recover past-due child support. Termination did relieve the terminated father of any obligation to pay future support.

In re J.R., 991 S.W.2d 318 (Tex. App.—Fort Worth 1999, no pet.). "Termination of parental rights is a drastic remedy and is of such weight and gravity that due process requires the petitioner to justify termination by 'clear and convincing evidence.' This standard is defined as the 'measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.' This is an intermediate standard that falls between the preponderance standard of ordinary civil proceedings and the reasonable doubt standard of criminal proceedings. While the proof must weigh heavier than merely the greater weight of the credible evidence, there is no requirement that the evidence be unequivocal or undisputed. Termination proceedings should be strictly scrutinized, and involuntary termination statutes are strictly construed in favor of the parent. This higher burden of proof in the trial court does not alter the appellate standard of review for factual sufficiency."

Sec. 161.2061. Terms Regarding Limited Post-Termination Contact

(a) If the court finds it to be in the best interest of the child, the court may provide in an order terminating the parent-child relationship that the biological parent who filed an affidavit of voluntary relinquishment of parental rights under Section 161.103 shall have limited post-termination contact with the child as provided by Subsection (b) on the agreement of the biological parent and the Department of Family and Protective Services.

(b) The order of termination may include terms that allow the biological parent to:

(1) receive specified information regarding the child;

(2) provide written communications to the child; and

(3) have limited access to the child.

(c) The terms of an order of termination regarding limited post-termination contact may be enforced only if the party seeking enforcement pleads and proves that, before filing the motion for enforcement, the party attempted in good faith to resolve the disputed matters through mediation.

(d) The terms of an order of termination under this section are not enforceable by contempt.

(e) The terms of an order of termination regarding limited post-termination contact may not be modified.

(f) An order under this section does not:

(1) affect the finality of a termination order; or

(2) grant standing to a parent whose parental rights have been terminated to file any action under this title other than a motion to enforce the terms regarding limited post-termination contact until the court renders a subsequent adoption order with respect to the child.

Added by Acts 2003, 78th Leg., ch. 561, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.087, eff. April 2, 2015.

PRACTICE TIPS

A careful reading of this section indicates that its use is limited to cases in which the TDFPS is a party. Some courts interpret the availability of posttermination contact differently. Generally, Texas law does not provide support for post-termination or postadoption court-ordered contact.

ANNOTATIONS

In re A.G.C., 279 S.W.3d 441 (Tex. App.—Houston [14th Dist.] 2009, no pet.). A trial court properly denied a motion for new trial when a biological father failed to show why he did not understand the limitations on his visitation rights regarding the child until after he executed documents expressly agreeing to the limitations under this section and requested the court to sign his proposed order which included the limitations.

Sec. 161.2062. PROVISION FOR LIMITED CONTACT BETWEEN BIOLOGICAL PARENT AND CHILD

(a) An order terminating the parent-child relationship may not require that a subsequent adoption order include terms regarding limited post-termination contact between the child and a biological parent.

(b) The inclusion of a requirement for post-termination contact described by Subsection (a) in a termination order does not:

(1) affect the finality of a termination or subsequent adoption order; or

(2) grant standing to a parent whose parental rights have been terminated to file any action under this title after the court renders a subsequent adoption order with respect to the child.

Added by Acts 2003, 78th Leg., ch. 561, Sec. 2, eff. Sept. 1, 2003.

Sec. 161.207. APPOINTMENT OF MANAGING CONSERVATOR ON TERMINATION

(a) If the court terminates the parent-child relationship with respect to both parents or to the only living parent, the court shall appoint a suitable, competent adult, the Department of Family and Protective Services, or a licensed child-placing agency as managing conservator of the child. An agency designated managing conservator in an unrevoked or irrevocable affidavit of relinquishment shall be appointed managing conservator.

(b) The order of appointment may refer to the docket number of the suit and need not refer to the parties nor be accompanied by any other papers in the record.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.088, eff. April 2, 2015.

ANNOTATIONS

In re D.N.C., 252 S.W.3d 317 (Tex. 2008) (per curiam). Reversal of an order terminating a mother's parental rights also required reversal of the appointment under this section of the TDFPS as managing conservator, even when the mother did not challenge the appointment, because the trial court made no findings under section 153.131.

In re J.A.J., 243 S.W.3d 611 (Tex. 2007). A challenge to the appointment of the TDFPS as a child's managing conservator was not subsumed in a birth mother's challenge to a termination order because TDFPS requested appointment as the child's sole managing conservator, citing section 151.131, in addition to requesting termination.

In re A.G.C., 279 S.W.3d 441 (Tex. App.—Houston [14th Dist.] 2009, no pet.). "This section reflects that a designation of a managing conservator is required in the order of termination when the court terminates the parent-child relationship with respect to both parents or to the only living parent. Father's argument that the designation of someone or some agency is always required would preclude the possibility of a single-parent household after a voluntary relinquishment of parental rights that is in the best interest of the child—a result contrary to logic and practical realities. We are not persuaded that the legislature would have intended such a result."

Department of Family & Protective Services v. Alternatives in Motion, 210 S.W.3d 794 (Tex. App.—Houston [1st Dist.] 2007, pet. denied). "Because the best interest of the child must be considered, we conclude that while appointment of a party designated in an affidavit of relinquishment in place of the parent whose rights are voluntarily terminated is automatic for the purpose of termination proceedings, appointment of that party as managing conservator in a suit to determine conservatorship of the child is subject to proof that the appointment is in the child's best interest."

Monroe v. Alternatives in Motion, 234 S.W.3d 56 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Sufficient evidence supported the finding that appointment of biological grandparents as managing conservators of a child under this section would not have been in the child's best interest when the child had lived continuously with her prospective adoptive parents her entire life, even when the birth father designated the biological grandparents as managing conservators in an affidavit of voluntary relinquishment of parental rights.

In re D.R.L.M., 84 S.W.3d 281 (Tex. App.—Fort Worth 2002, pet. denied). "The statute nowhere requires the trial court to abide by the parent's choice of a managing conservator expressed in the relinquishment affidavit."

Sec. 161.208. APPOINTMENT OF DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES AS MANAGING CONSERVATOR

If a parent of the child has not been personally served in a suit in which the Department of Family and Protective Services seeks termination, the court that terminates a parent-child relationship may not appoint the Department of Family and Protective Services as permanent managing conservator of the child unless the court determines that:

(1) the department has made a diligent effort to locate a missing parent who has not been personally served and a relative of that parent; and

(2) a relative located by the department has had a reasonable opportunity to request appointment as managing conservator of the child or the department has not been able to locate the missing parent or a relative of the missing parent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.089, eff. April 2, 2015.

ANNOTATIONS

In re N.J.D., No. 14-17-00711-CV, 2018 WL 650450 (Tex. App.—Houston [14th Dist.] Feb. 1, 2018, no pet. h.) (mem. op.). Because the mother was present at trial and did not argue at any stage of the proceeding that she was not properly served, the court of appeals held that the mother was not a "missing parent" and thus section 161.208 was inapplicable.

Sec. 161.209. COPY OF ORDER OF TERMINATION

A copy of an order of termination rendered under Section 161.206 is not required to be mailed to parties as provided by Rules 119a and 239a, Texas Rules of Civil Procedure.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Phillips v. Dallas County Child Protective Services Unit, 197 S.W.3d 862 (Tex. App.—Dallas 2006, pet. denied), *cert. denied*, 552 U.S. 952 (2007). Although a mother asserted that she did not receive notice of the final judgment terminating her parental rights, this section does not require the clerk of court to mail an order of termination to a terminated parent. Therefore, the clerk of court did not fail to perform any official duty under the Rules of Civil Procedure that would allow the mother to escape an element required for a bill of review.

Sec. 161.210. SEALING OF FILE

The court, on the motion of a party or on the court's own motion, may order the sealing of the file, the minutes of the court, or both, in a suit for termination.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re D.R.L.M., 84 S.W.3d 281 (Tex. App.—Fort Worth 2002, pet. denied). "If the court reporter's stenographic notes, transcription of those notes, and the exhibits offered into evidence at trial are not subject to a sealing order such as the one at issue, then in effect, the entire trial record is not sealed and is available to the public. We will not construe sections 161.210 and 162.021 in a manner that renders them meaningless and ineffectual." The appellate court also held that parties may not waive a sealing order.

Sec. 161.211. DIRECT OR COLLATERAL ATTACK ON TERMINATION ORDER

(a) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an order terminating the parental rights of a person who has been personally served or who has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in a child or whose rights have been terminated under Section 161.002(b) is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(b) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an order terminating the parental rights of a person who is served by citation by publication is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(c) A direct or collateral attack on an order terminating parental rights based on an unrevoked affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child is limited to issues relating to fraud, duress, or coercion in the execution of the affidavit.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 601, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 19, eff. Sept. 1, 1999.

ANNOTATIONS

Sec. 161.211 generally

In re M.E., No. 07-16-00039-CV, 2018 WL 343503 (Tex. App.—Amarillo, Jan. 8, 2018, no pet.) (mem. op.). Appellant asserted that application of section 161.211 to his bill of review deprived him of his due process rights. The appellate court declined to find a constitutional impediment to the application of the bar of section 161.211, finding appellant had not "developed a relationship with [the child], or had any significant custodial, personal or financial relationship with the child" despite being aware of the child's birth at the time the child was born.

Sec. 161.211(a): personally served, executed an affidavit of relinquishment or an affidavit of waiver of interest

In re B.L.D., 113 S.W.3d 340 (Tex. 2003), *cert. denied sub nom. Dossey v. Texas Dep't of Protective & Regulatory Services*, 541 U.S. 945 (2004). "To ensure that children's lives are not kept in limbo while judicial processes crawl forward, the Legislature requires that termination proceedings conclude at the trial level within a year and a half from the date of a child's removal from the parent. If a final order is not rendered by that time, the suit must be dismissed. In addition, the Legislature limits the time to collaterally or directly attack the validity of an order terminating parental rights until the sixth month after the date the order is signed."

In re E.C.Q.L., No. 12-16-00297-CV, 2017 WL 1534043 (Tex. App.—Tyler Apr. 28, 2017, no pet.) (mem. op.). The TDFPS's efforts to contact father prior to asking for substituted service did not meet the standard of a "diligent search" sufficient to warrant service by publication. Therefore, the court found that citation by publication was constitutionally inadequate and deprived father of due process. The court also found that the six-month time period for challenging the validity of an order terminating parental rights of a person who is served by publication does not apply when there has been a failure of service and, in that circumstance, the judgment is void and can be challenged at any time.

In re Bullock, 146 S.W.3d 783 (Tex. App.—Beaumont 2004, orig. proceeding). "Essentially, section 161.211's six month limitation on attacks on termination rulings is an affirmative defense, which is a proposition a defendant may interpose to defeat a plaintiff's prima facie case. An affirmative defense does not rebut the factual propositions of the plaintiff's pleading, but, instead, allows the defendant to introduce evidence to establish an independent reason why the plaintiff should not prevail." The court further found that section 161.211 is not a jurisdictional prerequisite to suit.

Sec. 161.211(b): "served by citation by publication"

In re E.R., 385 S.W.3d 552 (Tex. 2012). The time limitations set forth in subsection 161.211(b) cannot foreclose an attack by a parent who was deprived of constitutionally adequate notice, in this case, the adequacy of service by publication. For purposes of service of process, "a diligent search must include inquiries that someone who really wants to find the defendant would make, and diligence is measured not by the quantity of the search but by its quality." A lack of diligence makes service by publication ineffective.

In re E.C.Q.L., No. 12-16-00297-CV, 2017 WL 1534043 (Tex. App.—Tyler Apr. 28, 2017, no pet.) (mem. op.). Appellant's petition for bill of review was filed fifty-four months after the date of the order of termination and, therefore, was not timely under section 161.211(b). The court of appeals held that citation by publication was constitutionally inadequate because under the facts of the case, the department did not pursue available alternatives to effectuate service on the appellant. The court ultimately held that a complete failure of service deprives a litigant of due process and a trial court of personal jurisdiction, and that the resulting judgment is void and may be challenged at any time.

In re A.A.S., 367 S.W.3d 905 (Tex. App.—Houston [14th Dist.] 2012, no pet.). A father argued that the six-month limitations period did not apply because he was served with citation by publication only because his child's mother fraudulently provided false information to authorities about his whereabouts. The court of appeals held that the bill of review was a collateral or direct attack on the order terminating the father's parental rights. Under a plain reading of this section, the father's bill of review was barred.

Sec. 161.211(c): limited to fraud, duress, or coercion in executing unrevoked affidavit of relinquishment or affidavit of waiver of interest

In re D.S., 555 S.W.3d 301 (Tex. App.—Dallas 2018, pet. filed). A trial court must have jurisdiction over a child under UCCJEA before rendering a judgment terminating parental rights based on a voluntary affidavit of relinquishment, and once a petition seeking termination is filed in a court with jurisdiction under the UCCJEA, any direct or collateral attack is limited by the Family Code to claims based on fraud, duress, or coercion in obtaining the affidavit; allowing a party to seek termination of parental rights based on an affidavit of voluntary relinquishment in a court that does not have jurisdiction over the child under the UCCJEA would contravene the legislature's intent to prioritize home-state jurisdiction in child-custody cases.

EDITOR'S NOTE: The Texas Supreme Court has not addressed whether section 161.211(c) bars a challenge to a termination order based on a lack of subject matter jurisdiction under the UCCJEA. Moreover, few appellate courts have addressed whether section 161.211(c) bars a jurisdictional challenge. *Compare Moore v. Brown*, 408 S.W.3d 423 (Tex. App.—Austin 2013, pet. denied) (holding that the limitation on challenges set out in section 161.211(c) is sufficiently broad as to prohibit even subject matter jurisdiction challenges to termination orders), *with In re D.S.*, 555 S.W.3d 301 (Tex. App.—Dallas 2018, pet. filed) (declining to follow *Moore* and holding that construing section 161.211(c) to bar attacks on a termination order based on a lack of subject matter jurisdiction would allow a party, with-

out fear of challenge, to deliberately bypass the court with home state jurisdiction over a child and file a petition to terminate parental rights in any court based on defects in an affidavit of voluntary relinquishment.

In re Z.M.R., 562 S.W.3d 783 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Sufficient evidence supported a finding that the mother's affidavit of relinquishment of parental rights was not due to fraud, duress, or coercion, despite argument that the mother had a diminished mental capacity. The mother's lawyer stated on the record that she explained the affidavit to the mother, that the mother wanted to sign it, and that nothing was promised to the mother; a caseworker testified that the mother brought someone with her to court for evaluation as a placement for the children; children's guardian ad litem testified that the mother appeared to understand what she was doing as to the affidavit; and the mother engaged in a long discussion with the trial judge in which she confirmed that she understood the benefits of relinquishment over termination on another ground.

In re K.S.L., 499 S.W.3d 109 (Tex. App.—San Antonio 2016, pet. filed) (citations omitted). In discussing the Dallas court of appeals' holding in *In re J.H.*, 486 S.W.3d 190 (Tex. App.—Dallas 2016, no. pet.) (that when an appellant has executed an affidavit of relinquishment, the appellant's arguments on appeal are limited to fraud, duress, or coercion in the execution of the affidavit and cannot include arguments that the evidence was insufficient to meet the "best interest" standard), the San Antonio court declined to follow the holding in *In re J.H.*. The court held that "[i]nstead, we remain mindful of the fundamental liberty interest a parent has in his or her child and strictly construe involuntary termination statutes in favor of maintaining the natural relationship between parent and child. We are further mindful that the Due Process Clause of the United States Constitution and the Texas Family Code place the burden of proof on the [proponent] to prove the necessary elements to terminate the parent-child relationship by the heightened burden of 'clear and convincing evidence.' . . . Accordingly, we hold that the [proponent] is not relieved of its burden to prove best interest merely because a parent has executed a voluntary and irrevocable affidavit of relinquishment of parental rights. . . . We agree that the due process protections afforded to parents in parental-rights termination cases precludes foreclosure of judicial review of best-interest determinations even where the parent has voluntarily signed an irrevocable affidavit of relinquishment." The court held that the evidence presented did not meet the burden of clear and convincing evidence that the termination was in the child's best interest and rendered judgment denying the petition for termination.

In re J.H., 486 S.W.3d 190 (Tex. App.—Dallas 2016, no. pet.). The court held that section 161.211(c) bars appellant's argument that there was insufficient evidence that the termination was in the children's best interest when appellant has signed a voluntary affidavit of relinquishment and that the issues are limited to fraud, duress, or coercion in the execution of the affidavit. The court held that the statute is clear and unambiguous so effect is given to its plain meaning. Additionally, the court held, "That a parent feels pressure or emotional upset when she signs an affidavit does not itself render the affidavit involuntary."

In re D.E.H., 301 S.W.3d 825 (Tex. App.—Fort Worth 2009, pet. denied) (en banc). "Once an affidavit has been shown to comply with the requirements of section 161.103 of the Family Code, the affidavit may be set aside only upon proof, by a preponderance of the evidence, that the affidavit was executed as a result of fraud, duress, or coercion. The burden of proving such wrongdoing is on the party opposing the affidavit."

In re D.R.L.M., 84 S.W.3d 281 (Tex. App.—Fort Worth 2002, pet. denied). A birth mother signed an affidavit voluntarily relinquishing her parental rights to the child and designating prospective adoptive parents, who had adopted another of the mother's children, to adopt the child. The trial court terminated the mother's parental rights but appointed a foster family as the managing conservators and found that adoption by the foster family was in the child's best interest. The birth mother argued that she voluntarily executed the affidavit only on the understanding that the child would be placed with the family she designated. However, there was evidence that birth mother understood her rights would be terminated regardless of the ultimate placement of the child, and on the issue of voluntariness the appellate court overruled her objection.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. ADOPTION OF A CHILD

Sec. 162.001. WHO MAY ADOPT AND BE ADOPTED

(a) Subject to the requirements for standing to sue in Chapter 102, an adult may petition to adopt a child who may be adopted.

(b) A child residing in this state may be adopted if:

(1) the parent-child relationship as to each living parent of the child has been terminated or a suit for termination is joined with the suit for adoption;

(2) the parent whose rights have not been terminated is presently the spouse of the petitioner and the proceeding is for a stepparent adoption;

(3) the child is at least two years old, the parent-child relationship has been terminated with respect to one parent, the person seeking the adoption has been a managing conservator or has had actual care, possession, and control of the child for a period of six months preceding the adoption or is the child's former stepparent, and the nonterminated parent consents to the adoption; or

(4) the child is at least two years old, the parent-child relationship has been terminated with respect to one parent, and the person seeking the adoption is the child's former stepparent and has been a managing conservator or has had actual care, possession, and control of the child for a period of one year preceding the adoption.

(c) If an affidavit of relinquishment of parental rights contains a consent for the Department of Family and Protective Services or a licensed child-placing agency to place the child for adoption and appoints the department or agency managing conservator of the child, further consent by the parent is not required and the adoption order shall terminate all rights of the parent without further termination proceedings.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 14, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 493, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.090, eff. April 2, 2015.

COMMENTS

In June 2015, the U.S. Supreme Court issued *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). The opinion declared the Defense of Marriage Act unconstitutional, thus allowing same-sex couples to exercise the fundamental right to marry in all states. Courts can no longer refuse to recognize a lawfully performed same-sex marriage from another state. This declaration affects same-sex married couples in family formation by adoption.

This section intends to harmonize the application of the adoption statutes with the requirements of standing. Many courts rely on this section to deny what is known as "second parent" adoptions since, in general, the person requesting to adopt is not the spouse of the other parent and both parents are not terminated. The *Obergefell* decision may affect the definition of "spouse."

ANNOTATIONS

Obergefell v. Hodges, 135 S. Ct. 2584 (2015). The definition of "spouse" may be determinative in application to adoption proceedings. *See* Tex. Fam. Code, tit. 1, et seq.

Trevino v. Garcia, 627 S.W.2d 147 (Tex. 1982, orig. proceeding). There can be no adoption by estoppel. The biological parents of a child consented to the child being raised by an aunt and uncle for a six-year period. The biological parents did not execute any document voluntarily relinquishing their parental rights, and their parental rights were not terminated by court order. The biological parents took custody of the child, and the aunt and uncle sought a writ of habeas corpus arguing that they had adopted the child by estoppel. The Texas Supreme Court denied the petition for writ of habeas corpus and found that the aunt and uncle failed to prove a legal right to possession of the child.

Durham v. Barrow, 600 S.W.2d 756 (Tex. 1980). Plaintiffs, the biological mother and a guardian ad litem for two children in a prior suit, sought a bill of review to set aside the adoption of the children and return the children to the biological mother. Plaintiffs had received no notice of the adoption suit. The Texas Supreme Court held that the petition for bill of review attacked both the termination decree and the adoption, and that both the mother and the guardian ad litem had standing to maintain the bill of review to set aside the termination judgment. The court also held that the guardian ad litem had no standing to maintain a bill of review regarding the adoption because the children were not necessary parties to the adoption suit, and the biological mother had standing to pursue the bill of review against the adoption only if the termination decree were set aside.

In re D.G., 329 S.W.3d 893 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding). Two years after divorce, a stepfather filed a petition for adoption alleging standing under subsection 162.001(b)(4). The mother did not consent, but the stepfather argued that he had actual care, possession, and control of the child for a period of one year preceding the adoption. The court of appeals held that the stepfather did not have standing under subsection 162.001(b)(4). The court found that the stepfather's interactions with the child, including picking the child up from day care, taking the child to church on one occasion, and spending twelve hours with the child one day at a college graduation were insufficient to show actual care, possession, and control.

RESOURCES

American Academy of Adoption Attorneys—**www.adoptionattorneys.org.**

Warren Cole, *Drafting Termination and Adoption Issues*, Adv. Fam. L. (2008).

Heidi Bruegel Cox, *Adoption Issues: Tips for the Lawyer, Adoption and The Paternity Registry*, Adv. Fam. L. (2008).

Heidi Bruegel Cox, *Adoption Practice Today: International and Federal Adoption Issues*, Am. L. Inst. (2008).

Joan H. Hollinger, *Adoption by Same-Sex Couples* (J.H. Hollinger 2010).

Karen J. Langsley, Anne S. Wynne & Ellen A. Yarrell, *Legal Recognition of Lesbian, Gay, Bisexual, and Transgender (LGBT) Parents in Texas*, Fam. L. Strategies for Same Sex Couples (2009).

Janet McCullar Vavra, *Termination and Step-Parent Adoption*, Adv. Fam. L. Drafting (2010).

Ellen A. Yarrell, *Termination and Adoption Workshop—Frequently Asked Questions About Termination and Adoption Issues*, Adv. Fam. L. (2008).

Sec. 162.002. PREREQUISITES TO PETITION

(a) If a petitioner is married, both spouses must join in the petition for adoption.

(b) A petition in a suit for adoption or a suit for appointment of a nonparent managing conservator with authority to consent to adoption of a child must include:

(1) a verified allegation that there has been compliance with Subchapter B; or

(2) if there has not been compliance with Subchapter B, a verified statement of the particular reasons for noncompliance.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.0025. ADOPTION SOUGHT BY MILITARY SERVICE MEMBER

In a suit for adoption, the fact that a petitioner is a member of the armed forces of the United States, a member of the Texas National Guard or the National Guard of another state, or a member of a reserve component of the armed forces of the United States may not be considered by the court, or any person performing an adoption evaluation or home screening, as a negative factor in determining whether the adoption is in the best interest of the child or whether the petitioner would be a suitable parent.

Added by Acts 2007, 80th Leg., R.S., Ch. 768 (H.B. 3537), Sec. 1, eff. June 15, 2007. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 3.02, eff. September 1, 2015.

Sec. 162.003. ADOPTION EVALUATION

In a suit for adoption, an adoption evaluation must be conducted as provided in Chapter 107.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 73, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 800, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 133, Sec. 6, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 6, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 3.03, eff. September 1, 2015.

COMMENTS

Prerequisites for the adoption evaluation are specified in Tex. Fam. Code ch. 107, subch D.

Sec. 162.0045. PREFERENTIAL SETTING

The court shall grant a motion for a preferential setting for a final hearing on an adoption and shall give precedence to that hearing over all other civil cases not given preference by other law if the adoption evaluation has been filed and the criminal history for the person seeking to adopt the child has been obtained.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 15, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 3.04, eff. September 1, 2015.

Sec. 162.005. PREPARATION OF HEALTH, SOCIAL, EDUCATIONAL, AND GENETIC HISTORY REPORT

(a) This section does not apply to an adoption by the child's:

(1) grandparent;

(2) aunt or uncle by birth, marriage, or prior adoption; or

(3) stepparent.

(b) Before placing a child for adoption, the Department of Family and Protective Services, a licensed child-placing agency, or the child's parent or guardian shall compile a report on the available health, social, educational, and genetic history of the child to be adopted.

(c) The department shall ensure that each licensed child-placing agency, single source continuum contractor, or other person placing a child for adoption receives a copy of any portion of the report prepared by the department.

(d) If the child has been placed for adoption by a person or entity other than the department, a licensed child-placing agency, or the child's parent or guardian, it is the duty of the person or entity who places the child for adoption to prepare the report.

(e) The person or entity who places the child for adoption shall provide the prospective adoptive parents a copy of the report as early as practicable before the first meeting of the adoptive parents with the child. The copy of the report shall be edited to protect the identity of birth parents and their families.

(f) The department, licensed child-placing agency, parent, guardian, person, or entity who prepares and files the original report is required to furnish supplemental medical, psychological, and psy-

chiatric information to the adoptive parents if that information becomes available and to file the supplemental information where the original report is filed. The supplemental information shall be retained for as long as the original report is required to be retained.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.091, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 12, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 4, eff. Sept. 1, 2017.

Sec. 162.006. ACCESS TO HEALTH, SOCIAL, EDUCATIONAL, AND GENETIC HISTORY REPORT; RETENTION

(a) Redesignated by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 15, eff. September 1, 2015.

(b) The department, licensed child-placing agency, or court retaining a copy of the report shall provide a copy of the report that has been edited to protect the identity of the birth parents and any other person whose identity is confidential to the following persons on request:

(1) an adoptive parent of the adopted child;

(2) the managing conservator, guardian of the person, or legal custodian of the adopted child;

(3) the adopted child, after the child is an adult;

(4) the surviving spouse of the adopted child if the adopted child is dead and the spouse is the parent or guardian of a child of the deceased adopted child; or

(5) a progeny of the adopted child if the adopted child is dead and the progeny is an adult.

(c) A copy of the report may not be furnished to a person who cannot furnish satisfactory proof of identity and legal entitlement to receive a copy.

(d) A person requesting a copy of the report shall pay the actual and reasonable costs of providing a copy and verifying entitlement to the copy.

(e) The report shall be retained for 99 years from the date of the adoption by the department or licensed child-placing agency placing the child for adoption. If the agency ceases to function as a child-placing agency, the agency shall transfer all the reports to the department or, after giving notice to the department, to a transferee agency that is assuming responsibility for the preservation of the agency's adoption records. If the child has not been placed for adoption by the department or a licensed child-placing agency and if the child is being adopted by a person other than the child's stepparent, grandparent, aunt, or uncle by birth, marriage, or prior adoption, the person or entity who places the child for adoption shall file the report with the department, which shall retain the copies for 99 years from the date of the adoption.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 1069 (H.B. 3259), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 13, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 15(a), eff. September 1, 2015.

Sec. 162.0062. ACCESS TO INFORMATION

(a) Except as provided by Subsection (c), the prospective adoptive parents of a child are entitled to examine the records and other information relating to the history of the child. The Department of Family and Protective Services, licensed child-placing agency, or other person placing a child for adoption shall inform the prospective adoptive parents of their right to examine the records and other information relat-

ing to the history of the child. The department, licensed child-placing agency, or other person placing the child for adoption shall edit the records and information to protect the identity of the biological parents and any other person whose identity is confidential.

(a–1) If a child is placed with a prospective adoptive parent prior to adoption, the prospective adoptive parent is entitled to examine any record or other information relating to the child's health history, including the portion of the report prepared under Section 162.005 for the child that relates to the child's health. The department, licensed child-placing agency, single source continuum contractor, or other person placing a child for adoption shall inform the prospective adoptive parent of the prospective adoptive parent's right to examine the records and other information relating to the child's health history. The department, licensed child-placing agency, single source continuum contractor, or other person placing the child for adoption shall edit the records and information to protect the identity of the biological parents and any other person whose identity is confidential.

(b) The records described by Subsection (a) must include any records relating to an investigation of abuse in which the child was an alleged or confirmed victim of sexual abuse while residing in a foster home or other residential child-care facility. If the licensed child-placing agency or other person placing the child for adoption does not have the information required by this subsection, the department, at the request of the licensed child-placing agency or other person placing the child for adoption, shall provide the information to the prospective adoptive parents of the child.

(c) If the prospective adoptive parents of a child have reviewed the health, social, educational, and genetic history report for the child and indicated that they want to proceed with the adoption, the department may, but is not required to, allow the prospective adoptive parents of the child to examine the records and other information relating to the history of the child, unless the prospective adoptive parents request the child's case record. The department shall provide the child's case record to the prospective adoptive parents on the request of the prospective adoptive parents.

(c–1) If the prospective adoptive parents of a child indicate they want to proceed with the adoption under Subsection (c), the department, licensed child-placing agency, or single source continuum contractor shall provide the prospective adoptive parents with access to research regarding underlying health issues and other conditions of trauma that could impact child development and permanency.

(d) The adoptive parents and the adopted child, after the child is an adult, are entitled to receive copies of the records that have been edited to protect the identity of the biological parents and any other person whose identity is confidential and other information relating to the history of the child maintained by the department, licensed child-placing agency, person, or entity placing the child for adoption.

(e) It is the duty of the person or entity placing the child for adoption to edit the records and information to protect the identity of the biological parents and any other person whose identity is confidential.

(f) At the time an adoption order is rendered, the court shall provide to the parents of an adopted child information provided by the vital statistics unit that describes the functions of the voluntary adoption registry under Subchapter E. The licensed child-placing agency shall provide to each of the child's biological parents known to the agency, the information when the parent signs an affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child. The information shall include the right of the child or biological parent to refuse to participate in the registry. If the adopted child is 14 years old or older the court shall provide the information to the child.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 15(a), eff. September 1, 2015. Transferred, redesignated, and amended from Family Code, Section 162.018 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 15(b), eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 5, eff. Sept. 1, 2017.

Sec. 162.0065. EDITING ADOPTION RECORDS IN DEPARTMENT PLACEMENT

Notwithstanding any other provision of this chapter, in an adoption in which a child is placed for adoption by the Department of Family and Protective Services, the department is not required to edit records to protect the identity of birth parents and other persons whose identity is confidential if the department determines that information is already known to the adoptive parents or is readily available through other sources, including the court records of a suit to terminate the parent-child relationship under Chapter 161.

Added by Acts 2003, 78th Leg., ch. 68, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.093, eff. April 2, 2015.

Sec. 162.007. CONTENTS OF HEALTH, SOCIAL, EDUCATIONAL, AND GENETIC HISTORY REPORT

(a) The health history of the child must include information about:

(1) the child's health status at the time of placement;

(2) the child's birth, neonatal, and other medical, psychological, psychiatric, and dental history information, including to the extent known by the **Department of Family and Protective Services based on the information collected under Section 264.019** ~~department~~:

(A) whether the child's birth mother consumed alcohol during pregnancy; and

(B) whether the child has been diagnosed with fetal alcohol spectrum disorder;

(3) a record of immunizations for the child; and

(4) the available results of medical, psychological, psychiatric, and dental examinations of the child.

(b) The social history of the child must include information, to the extent known, about past and existing relationships between the child and the child's siblings, parents by birth, extended family, and other persons who have had physical possession of or legal access to the child.

(c) The educational history of the child must include, to the extent known, information about:

(1) the enrollment and performance of the child in educational institutions;

(2) results of educational testing and standardized tests for the child; and

(3) special educational needs, if any, of the child.

(d) The genetic history of the child must include a description of the child's parents by birth and their parents, any other child born to either of the child's parents, and extended family members and must include, to the extent the information is available, information about:

(1) their health and medical history, including any genetic diseases and disorders;

(2) their health status at the time of placement;

(3) the cause of and their age at death;

(4) their height, weight, and eye and hair color;

(5) their nationality and ethnic background;

(6) their general levels of educational and professional achievements, if any;

(7) their religious backgrounds, if any;

(8) any psychological, psychiatric, or social evaluations, including the date of the evaluation, any diagnosis, and a summary of any findings;

(9) any criminal conviction records relating to a misdemeanor or felony classified as an offense against the person or family or public indecency or a felony violation of a statute intended to control the possession or distribution of a substance included in Chapter 481, Health and Safety Code; and

(10) any information necessary to determine whether the child is entitled to or otherwise eligible for state or federal financial, medical, or other assistance.

(e) The report shall include a history of physical, sexual, or emotional abuse suffered by the child, if any.

(f) Notwithstanding the other provisions of this section, the Department of Family and Protective Services may, in accordance with department rule, modify the form and contents of the health, social, educational, and genetic history report for a child as the department determines appropriate based on:

(1) the relationship between the prospective adoptive parents and the child or the child's birth family;

(2) the provision of the child's case record to the prospective adoptive parents; or

(3) any other factor specified by department rule.

(g) In this section, "fetal alcohol spectrum disorder" means any of a group of conditions that can occur in a person whose mother consumed alcohol during pregnancy.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 12, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 14, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 6, eff. Sept. 1, 2017. Acts 2019, 86th Leg., S.B. 195, Sec. 1, eff. Jan. 1, 2020.

COMMENTS

In private or independent placements, the practitioner should assist in securing the information required to comply with this prerequisite.

PRACTICE TIPS

Have the birth parents, if available, complete the form at the earliest stage in the process so that there is a greater likelihood of securing the information. At the same time, the practitioner should investigate whether either birthparent has any Native American heritage which may trigger the implementation of the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901–1963.

ANNOTATIONS

Little v. Smith, 943 S.W.2d 414 (Tex. 1997). "Under section 162.007, the adoption records are to include information about the biological parents' health and medical history; any genetic diseases or disorders; their height, weight, eye, and hair color; nationality and ethnic background; general levels of education; religious backgrounds; and psychological, psychiatric, or social evaluations. *Id.* § 162.007(d). However, the identity of the biological parents must be edited from the public records. . . . To strike a balance between the respective desires of the biological parents and their offspring to either retain anonymity or to learn the identity of one another, the Legislature has implemented a comprehensive voluntary registration process. *See* Tex. Fam. Code §§ 162.401–.422."

Sec. 162.008. FILING OF HEALTH, SOCIAL, EDUCATIONAL, AND GENETIC HISTORY REPORT

(a) This section does not apply to an adoption by the child's:

(1) grandparent;

(2) aunt or uncle by birth, marriage, or prior adoption; or

(3) stepparent.

(b) A petition for adoption may not be granted until the following documents have been filed:

(1) a copy of the health, social, educational, and genetic history report signed by the child's adoptive parents; and

(2) if the report is required to be submitted to the Department of Family and Protective Services under Section 162.006(e), a certificate from the department acknowledging receipt of the report.

(c) A court having jurisdiction of a suit affecting the parent-child relationship may by order waive the making and filing of a report under this section if the child's biological parents cannot be located and their absence results in insufficient information being available to compile the report.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 20, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.094, eff. April 2, 2015.

Sec. 162.0085. CRIMINAL HISTORY REPORT REQUIRED

(a) In a suit affecting the parent-child relationship in which an adoption is sought, the court shall order each person seeking to adopt the child to obtain that person's own criminal history record information. The court shall accept under this section a person's criminal history record information that is provided by the Department of Family and Protective Services or by a licensed child-placing agency that received the information from the department if the information was obtained not more than one year before the date the court ordered the history to be obtained.

(b) A person required to obtain information under Subsection (a) shall obtain the information in the manner provided by Section 411.128, Government Code.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 75, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 908, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 16, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.095, eff. April 2, 2015.

COMMENTS

Each adopting party is required to submit both a report from the Texas Department of Public Safety, if Texas residents, as well as a Child Abuse Neglect Reporting Information System (CANRIS) report from the TDFPS. Many states also require FBI reports.

PRACTICE TIPS

When working with prospective adoptive parents, the practitioner should explain the purpose of this section. In the event a party has a criminal record, the party should report the criminal history to the adoption evaluation preparer for inclusion in the adoption evaluation. When handling interstate adoptions, check with the other state's Interstate Compact Administrator to determine whether FBI checks are required.

Sec. 162.0086. INFORMATION REGARDING SIBLING ACCESS

(a) The Department of Family and Protective Services shall provide information to each person seeking to adopt a child placed for adoption by the department regarding the right of a child's sibling to file a suit for access to the child under Sections 102.0045 and 153.551.

(b) The department may provide the information required under Subsection (a) on any form or application provided to prospective adoptive parents.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 7, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., Ch. 413 (S.B. 948), Sec. 1, eff. Sept. 1, 2017.

Sec. 162.009. RESIDENCE WITH PETITIONER

(a) The court may not grant an adoption until the child has resided with the petitioner for not less than six months.

(b) On request of the petitioner, the court may waive the residence requirement if the waiver is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Celestine v. Texas Department of Family & Protective Services, 321 S.W.3d 222 (Tex. App.—Houston [1st Dist.] 2010, no pet.). "Celestine alleges that because section 162.009(b) allows the trial court to waive the six-month requirement if it finds that waiver is in the child's best interest, she was therefore entitled to an opportunity to present evidence and be heard on the issue of whether waiver was indeed in the children's best interest." But this section "does not expressly require the trial court to hold a hearing specifically on this issue before it determines whether waiver of the six-month requirement is in the children's best interest." The court noted that it was apparent in the record that the trial court had already heard, without the necessity of a separate hearing, substantial testimony regarding whether the children's best interest would be served by a waiver of the six-month residency requirement.

Sec. 162.010. CONSENT REQUIRED

(a) Unless the managing conservator is the petitioner, the written consent of a managing conservator to the adoption must be filed. The court may waive the requirement of consent by the managing conservator if the court finds that the consent is being refused or has been revoked without good cause. A hearing on the issue of consent shall be conducted by the court without a jury.

(b) If a parent of the child is presently the spouse of the petitioner, that parent must join in the petition for adoption and further consent of that parent is not required.

(c) A child 12 years of age or older must consent to the adoption in writing or in court. The court may waive this requirement if it would serve the child's best interest.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 76, eff. Sept. 1, 1995.

ANNOTATIONS

In re A.M., 312 S.W.3d 76 (Tex. App.—San Antonio 2010, pet. denied). This section's provision "that the managing conservator's consent may not be refused absent good cause, does not apply until *after* the movant has established standing under [Texas Family Code] Chapter 102. . . . [T]here simply is no statutory basis for an inquiry into the motivation of a managing conservator's refusal to consent to an adoption in section 102.006, and we cannot import section 162.010 to provide such a basis." (emphasis in original).

In re F.G., No. 04-04-00681-CV, 2005 WL 3477830 (Tex. App.—San Antonio Dec. 21, 2005, no pet.) (mem. op.). Appellants argued that the trial court erred in finding that the TDFPS, the children's managing conservator, had good cause to refuse consent to adoption. The court of appeals upheld the trial court's ruling, holding that evidence that appellants allowed the child contact with her biological mother, whose rights had been terminated, and that appellants had stated in the past that their goal was to reunify the child with her biological mother was sufficient to show that the TDFPS had good cause to refuse to consent to the adoption.

In re M.P.J., No. 14-03-00746-CV, 2004 WL 1607507 (Tex. App.—Houston [14th Dist.] July 20, 2004, pet. denied) (mem. op.). A trial court did not err in finding the TDFPS, which was the children's managing conservator, had good cause to refuse consent to adoption when appellant had a history of physical abuse against a child, an indictment and pending charge of aggravated sexual assault of a child (even when the validity of the charge was not investigated), and when TDFPS had determined that adoption by another family was in the child's best interest.

Chapman v. Edna Gladney Home, 561 S.W.2d 265 (Tex. Civ. App.—Fort Worth 1978, no writ). Appellants were prospective adoptive parents of a child who was placed in their care by an agency. Appellants and the agency anticipated that after the expiration of a six-month period, appellants would pursue the adoption of the child. Within the six-month period, the agency concluded that the adoption was not in the child's best interest and removed the child from appellants' care. Appellants sued TDFPS for an injunction to return the child and to initiate adoption proceedings. The trial court denied the injunction. The court of appeals affirmed the trial court's ruling, concluding that the evidence supported a finding that the adoption was not in the child's best interest and that good cause supported the refusal of TDFPS to consent.

Sec. 162.011. Revocation of Consent

At any time before an order granting the adoption of the child is rendered, a consent required by Section 162.010 may be revoked by filing a signed revocation.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.012. Direct or Collateral Attack

(a) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an adoption order is not subject to attack after six months after the date the order was signed.

(b) The validity of a final adoption order is not subject to attack because a health, social, educational, and genetic history was not filed.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 601, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 600, Sec. 2, eff. Jan. 1, 1998.

COMMENTS

Three Texas appellate courts have addressed the validity of second parent adoptions. Each court affirmed that a direct or collateral attack on the adoption order was inappropriate unless filed within six months of the initial adoption order.

PRACTICE TIPS

The practitioner venturing into this area should notify the parties involved of the potential for legal disruption if either party challenges the adoption within six months of the order. Representation of both parties may create a conflict-of-interest ethical issue for the practitioner.

ANNOTATIONS

Goodson v. Castellanos, 214 S.W.3d 741 (Tex. App.—Austin 2007, pet. denied). Appellant was involved in a same-sex relationship, traveled to Kazakhstan, and adopted a three-year-old child. The Kazakhstan adoption certificate listed only her as the child's adoptive parent, and upon returning to Texas, a Certificate of Adoption was filed to that effect. The following spring both members of the couple filed a joint petition to adopt the child. The trial court granted

the adoption, and the decree specified that parent-child relationships existed between both women and the child. The next year the relationship between the couple ended. The appellee, the parent who had not traveled to Kazakhstan, filed a SAPCR, and after a jury trial, was appointed sole managing conservator of the child. On appeal, court held that appellant could not collaterally attack the adoption because she did not raise her challenge within the six-month time period mandated by this section.

In re C.R.P., 192 S.W.3d 823 (Tex. App.—Fort Worth 2006, no pet.). At age seventeen, a biological mother executed an unrevoked or irrevocable affidavit of relinquishment of parental rights to the child. The maternal grandparents adopted the child. Approximately five years later, the biological mother and her new husband filed a petition to vacate the adoption, and in the alternative, an original petition in a SAPCR. The adoptive mother filed a motion to dismiss, which the trial court granted. The biological mother appealed. The appellate court upheld the trial court's dismissal of the suit, citing the six-month deadline to attack an adoption order.

Hobbs v. Van Stavern, 249 S.W.3d 1 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). A same-sex couple had a child through artificial insemination. The child was appellant's biological child, and the couple filed a joint petition seeking the adoption of the child by appellee. The trial court granted the adoption and expressly created a parent-child relationship between the child and appellee. Three years later the couple ended their relationship. The appellee filed a SAPCR, and the appellant contended that the appellee lacked standing as a parent to file the action and asserted that the adoption order was void. A jury in the SAPCR appointed the parties joint managing conservators. On appeal, the appellate court upheld the trial court's ruling on the issue of standing noting that the appellant's attack on the validity of the adoption order was barred by this section as it came nearly three years after the adoption order was signed.

Sec. 162.013. ABATEMENT OR DISMISSAL

(a) If the sole petitioner dies or the joint petitioners die, the court shall dismiss the suit for adoption.

(b) If one of the joint petitioners dies, the proceeding shall continue uninterrupted.

(c) If the joint petitioners divorce, the court shall abate the suit for adoption. The court shall dismiss the petition unless the petition is amended to request adoption by one of the original petitioners.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.014. ATTENDANCE AT HEARING REQUIRED

(a) If the joint petitioners are husband and wife and it would be unduly difficult for one of the petitioners to appear at the hearing, the court may waive the attendance of that petitioner if the other spouse is present.

(b) A child to be adopted who is 12 years of age or older shall attend the hearing. The court may waive this requirement in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.015. RACE OR ETHNICITY

(a) In determining the best interest of the child, the court may not deny or delay the adoption or otherwise discriminate on the basis of race or ethnicity of the child or the prospective adoptive parents.

(b) This section does not apply to a person, entity, tribe, organization, or child custody proceeding subject to the Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.). In this subsection "child custody proceeding" has the meaning provided by 25 U.S.C. Section 1903.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 77, eff. Sept. 1, 1995.

Sec. 162.016. ADOPTION ORDER

(a) If a petition requesting termination has been joined with a petition requesting adoption, the court shall also terminate the parent-child relationship at the same time the adoption order is rendered. The court must make separate findings that the termination is in the best interest of the child and that the adoption is in the best interest of the child.

(b) If the court finds that the requirements for adoption have been met and the adoption is in the best interest of the child, the court shall grant the adoption.

(c) The name of the child may be changed in the order if requested.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

The certificate of adoption states the name change. The district clerk certifies the order and forwards the certificate to the Vital Statistics Unit. Pursuant to *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the vital statistics unit will name both same-sex parents on the requested birth certificate.

PRACTICE TIPS

If the adopted child was born in another state, then the vital statistics unit will submit a records request to the other state. The fees will be paid to the state entity issuing the new birth certificate.

ANNOTATIONS

Green v. Remling, 608 S.W.2d 905 (Tex. 1980) (citations omitted). "The paramount considerations in adoption proceedings are the rights and welfare of the children involved and these statutes are to be liberally construed in favor of the minor to effectuate their beneficial purpose. . . . [T]he court may decree an adoption only when it is satisfied that adoption is in the best interests of the child. To effectuate this provision, the trial court in adoption cases is invested with broad discretionary power in determining the best interests of the children. The trial judge is better situated to weigh all of the surrounding circumstances and arrive at a judgment which in his discretion will best protect the best interests of the child. No right to a jury exists in an adoption hearing. The judgment of the trial court should not be disturbed unless it appears from the record as a whole that there was an abuse of discretion."

In re C.J.T., No. 04-14-00621-CV, 2016 WL 413262 (Tex. App.—San Antonio Feb. 3, 2016, no pet.) (mem. op.) (citations omitted). "The sole objection to the adoption was that adoption would allow [maternal grandparents] to deny C.J.T.'s father's side of the family access to C.J.T. [Maternal grandparents] contend section 153.434 of the Family Code 'should be construed as precluding a trial court from denying an adoption based on concern that the adoption will cut off a grandparent's ability to seek court ordered possession and access to the grandchild adoptee.' . . . The plain language of section 153.434 does not provide that a trial court may not consider whether an adoption would likely result in a child's loss of access to his family and whether or not that is in the child's best interest. . . . The maintenance of a child's relationship with his family can be relevant to determining the child's best interest. . . . However, maintaining family relationships solely out of 'considerations of sympathy and solitude' regarding the family members is not relevant to determining what is in the child's best interest....Considering and weighing all of the evidence, the trial court's finding that adoption was not in C.J.T.'s best interest is so against the great weight and preponderance of the evidence that it is clearly wrong and unjust."

Sec. 162.017. EFFECT OF ADOPTION

(a) An order of adoption creates the parent-child relationship between the adoptive parent and the child for all purposes.

(b) An adopted child is entitled to inherit from and through the child's adoptive parents as though the child were the biological child of the parents.

(c) The terms "child," "descendant," "issue," and other terms indicating the relationship of parent and child include an adopted child unless the context or express language clearly indicates otherwise.

(d) Nothing in this chapter precludes or affects the rights of a biological or adoptive maternal or paternal grandparent to reasonable possession of or access to a grandchild, as provided in Chapter 153.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 23, eff. June 18, 2005.

ANNOTATIONS

Adar v. Smith, 639 F.3d 146 (5th Cir. 2011) (en banc), *cert. denied*, 132 S. Ct. 400 (2011). An unmarried same-sex couple legally adopted a Louisiana-born infant in New York in 2006. They sought to have the child's birth certificate reissued in Louisiana replacing the names of the birth parents with the names of the adoptive parents. The Louisiana registrar took the position that under Louisiana law "adoptive parents" refers only to married parents and offered, instead, to place only one of the adoptive parents' names on the birth certificate, as Louisiana law permits single parent adoptions. The adoptive parents brought suit asserting that the registrar's action denied full faith and credit of the New York adoption decree and equal protection. The Fifth Circuit upheld the decision of the registrar holding that full faith and credit did not extend to the enforcement of the New York adoption decree by Louisiana.

EDITOR'S NOTE: After *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the vital statistics unit in Texas changed the form to allow same-sex parents to be listed on new birth certificates.

Penland v. Agnich, 940 S.W.2d 324 (Tex. App.—Dallas 1997, writ denied) (citations omitted). "Currently, the law provides that an adopted person is regarded as a 'child' of his adoptive parent in wills unless other language indicates an intent to exclude children by adoption. This presumption applies even to instruments executed by third persons."

Raines v. Sugg, 930 S.W.2d 912 (Tex. App.—Fort Worth 1996, no writ). Maternal grandparents' rights regarding their grandchildren, specifically their standing to seek visitation, did not terminate when their daughter (the children's biological mother) died and the children were adopted by a stepmother.

Sec. 162.019. COPY OF ORDER

A copy of the adoption order is not required to be mailed to the parties as provided in Rules 119a and 239a, Texas Rules of Civil Procedure.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.020. WITHDRAWAL OR DENIAL OF PETITION

If a petition requesting adoption is withdrawn or denied, the court may order the removal of the child from the proposed adoptive home if removal is in the child's best interest and may enter any order necessary for the welfare of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.021. SEALING FILE

(a) The court, on the motion of a party or on the court's own motion, may order the sealing of the file and the minutes of the court, or both, in a suit requesting an adoption.

(b) Rendition of the order does not relieve the clerk from the duty to send information regarding adoption to the vital statistics unit as required by this subchapter and Chapter 108.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 78, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.097, eff. April 2, 2015.

PRACTICE TIPS

Include a separate order for the issuance of certified copies of the adoption decree before the file is sealed.

Sec. 162.022. CONFIDENTIALITY MAINTAINED BY CLERK

The records concerning a child maintained by the district clerk after entry of an order of adoption are confidential. No person is entitled to access to the records or may obtain information from the records except for good cause under an order of the court that issued the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.023. ADOPTION ORDER FROM FOREIGN COUNTRY

(a) Except as otherwise provided by law, an adoption order rendered to a resident of this state that is made by a foreign country shall be accorded full faith and credit by the courts of this state and enforced as if the order were rendered by a court in this state unless the adoption law or process of the foreign country violates the fundamental principles of human rights or the laws or public policy of this state.

(b) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (a), the court shall order the state registrar to:

(1) register the order under Chapter 192, Health and Safety Code; and

(2) file a certificate of birth for the child under Section 192.006, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 19, Sec. 1, eff. Sept. 1, 2003.

Sec. 162.025. PLACEMENT BY UNAUTHORIZED PERSON; OFFENSE

(a) A person who is not the natural or adoptive parent of the child, the legal guardian of the child, or a child-placing agency licensed under Chapter 42, Human Resources Code, commits an offense if the person:

(1) serves as an intermediary between a prospective adoptive parent and an expectant parent or parent of a minor child to identify the parties to each other; or

(2) places a child for adoption.

(b) It is not an offense under this section if a professional provides legal or medical services to:

(1) a parent who identifies the prospective adoptive parent and places the child for adoption without the assistance of the professional; or

(2) a prospective adoptive parent who identifies a parent and receives placement of a child for adoption without the assistance of the professional.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 411, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 18, eff. Sept. 1, 1997.

COMMENTS

Texas law prohibits the sale of a child under any circumstances. This section is designed to prohibit third parties from acting as intermediaries in facilitating adoptive placements for a fee, unless the person or entity is a licensed child placing agency in Texas. Further, attorneys, doctors, and other professionals are likewise precluded from making placements by this statute.

Sec. 162.026. REGULATED CUSTODY TRANSFER OF ADOPTED CHILD

A parent, managing conservator, or guardian of an adopted child may not transfer permanent physical custody of the child to any person who is not a relative or stepparent of the child or an adult who has a significant and long-standing relationship with the child unless:

(1) the parent, managing conservator, or guardian files a petition with a court of competent jurisdiction requesting a transfer of custody; and

(2) the court approves the petition.

Added by Acts 2017, 85th Leg., R.S., Ch. 985 (H.B. 834), Sec. 1, eff. Sept. 1, 2017.

SUBCHAPTER B. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Sec. 162.101. DEFINITIONS

In this subchapter:

(1) "Appropriate public authorities," with reference to this state, means the commissioner of the Department of Family and Protective Services.

(2) "Appropriate authority in the receiving state," with reference to this state, means the commissioner of the Department of Family and Protective Services.

(3) "Compact" means the Interstate Compact on the Placement of Children.

(4) "Executive head," with reference to this state, means the governor.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 846, Sec. 2, eff. June 16, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.098, eff. April 2, 2015.

COMMENTS

Regulating the transfers of children between states is controlled by the Interstate Compact on the Placement of Children. The rules and regulations require that thirty-five states accept any modifications or revisions to the compact.

PRACTICE TIPS

The practitioner should check with the Texas Interstate Compact on the Placement of Children administrator to determine the other state's requirements for approval.

Sec. 162.102. ADOPTION OF COMPACT; TEXT

The Interstate Compact on the Placement of Children is adopted by this state and entered into with all other jurisdictions in form substantially as provided by this subchapter.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(b) "Sending agency" means a party state, officer, or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) the name, date, and place of birth of the child;

(2) the identity and address or addresses of the parents or legal guardian;

(3) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to Paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in Paragraph (a) hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

(a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state; or

(b) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 162.108 and amended by Acts 1995, 74th Leg., ch. 846, Sec. 3, eff. June 16, 1995.

COMMENTS

While each section of the compact is important, the most frequently asked question involves the exceptions list in Article V111, section (a). Each state compact administrator has specific requirements for information submitted.

PRACTICE TIPS

Check both states' administrators' requirements.

ANNOTATIONS

In re C.R.-A.A., 521 S.W.3d 893, 908 (Tex. App.—San Antonio 2017, no pet.). The plain language of the ICPC established that it applies only to out-of-state placements of children into foster care or as a preliminary to a possible adoption. The compact does not apply to interstate placements of children with their natural parents.

Broyles v. Ashworth, 782 S.W.2d 31 (Tex. App.—Fort Worth 1989, orig. proceeding). "We interpret the statute as meaning that whatever authority the sending agency might have with respect to custody and disposition of the child, prior to one of the listed events, is to be determined according to the law of the sending agency's state. We do not interpret the section to mean that a natural mother, if she is the sending agency, has the absolute right to regain custody of a child which she has placed in another state for adoption, merely upon her demand."

Sec. 162.103. FINANCIAL RESPONSIBILITY FOR CHILD

(a) Financial responsibility for a child placed as provided in the compact is determined, in the first instance, as provided in Article V of the compact. After partial or complete default of performance under the provisions of Article V assigning financial responsibility, the commissioner of the Department of Family and Protective Services may bring suit under Chapter 154 and may file a complaint with the appropriate prosecuting attorney, claiming a violation of Section 25.05, Penal Code.

(b) After default, if the commissioner of the Department of Family and Protective Services determines that financial responsibility is unlikely to be assumed by the sending agency or the child's parents, the commissioner may cause the child to be returned to the sending agency.

(c) After default, the Department of Family and Protective Services shall assume financial responsibility for the child until it is assumed by the child's parents or until the child is safely returned to the sending agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 162.109 and amended by Acts 1995, 74th Leg., ch. 846, Sec. 4, eff. June 16, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.099, eff. April 2, 2015.

Sec. 162.104. APPROVAL OF PLACEMENT

The commissioner of the Department of Family and Protective Services may not approve the placement of a child in this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 162.110 and amended by Acts 1995, 74th Leg., ch. 846, Sec. 5, eff. June 16, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.100, eff. April 2, 2015.

Sec. 162.105. PLACEMENT IN ANOTHER STATE

A juvenile court may place a delinquent child in an institution in another state as provided by Article VI of the compact. After placement in another state, the court retains jurisdiction of the child as provided by Article V of the compact.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 162.111 by Acts 1995, 74th Leg., ch. 846, Sec. 6, eff. June 16, 1995.

Sec. 162.106. COMPACT AUTHORITY

(a) The governor shall appoint the commissioner of the Department of Family and Protective Services as compact administrator.

(b) The commissioner of the Department of Family and Protective Services shall designate a deputy compact administrator and staff necessary to execute the terms of the compact in this state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 162.112 and amended by Acts 1995, 74th Leg., ch. 846, Sec. 7, eff. June 16, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.101, eff. April 2, 2015.

Sec. 162.107. OFFENSES; PENALTIES

(a) An individual, agency, corporation, or child-care facility that violates a provision of the compact commits an offense. An offense under this subsection is a Class B misdemeanor.

(b) An individual, agency, corporation, child-care facility, or general residential operation in this state that violates Article IV of the compact commits an offense. An offense under this subsection is a Class B misdemeanor. On conviction, the court shall revoke any license to operate as a child-care facility or general residential operation issued by the Department of Family and Protective Services to the entity convicted and shall revoke any license or certification of the individual, agency, or corporation necessary to practice in the state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 162.113 and amended by Acts 1995, 74th Leg., ch. 846, Sec. 8, eff. June 16, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.102, eff. April 2, 2015.

SUBCHAPTER C. INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

Sec. 162.201. ADOPTION OF COMPACT; TEXT

The Interstate Compact on Adoption and Medical Assistance is adopted by this state and entered into with all other jurisdictions joining in the compact in form substantially as provided under this subchapter.

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

ARTICLE I. FINDINGS

The legislature finds that:

(a) Finding adoptive families for children for whom state assistance is desirable, under Subchapter D, Chapter 162, and assuring the protection of the interest of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state.

(b) The provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

ARTICLE II. PURPOSES

The purposes of the compact are to:

(a) authorize the Department of Family and Protective Services, with the concurrence of the Health and Human Services Commission, to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the Department of Family and Protective Services; and

(b) provide procedures for interstate children's adoption assistance payments, including medical payments.

ARTICLE III. DEFINITIONS

In this compact:

(a) "Adoption assistance state" means the state that signs an adoption assistance agreement in a particular case.

(b) "Residence state" means the state in which the child resides by virtue of the residence of the adoptive parents.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or a territory or possession administered by the United States.

ARTICLE IV. COMPACTS AUTHORIZED

The Department of Family and Protective Services, through its commissioner, is authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes of this compact. An interstate compact authorized by this article has the force and effect of law.

ARTICLE V. CONTENTS OF COMPACTS

A compact entered into under the authority conferred by this compact shall contain:

(1) a provision making the compact available for joinder by all states;

(2) a provision for withdrawal from the compact on written notice to the parties, with a period of one year between the date of the notice and the effective date of the withdrawal;

(3) a requirement that protections under the compact continue for the duration of the adoption assistance and apply to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they reside and have their principal place of abode;

(4) a requirement that each case of adoption assistance to which the compact applies be covered by a written adoption assistance agreement between the adoptive parents and the state child welfare agency of the state that provides the adoption assistance and that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) other provisions that are appropriate for the proper administration of the compact.

ARTICLE VI. OPTIONAL CONTENTS OF COMPACTS

A compact entered into under the authority conferred by this compact may contain the following provisions, in addition to those required under Article V of this compact:

(1) provisions establishing procedures and entitlement to medical, developmental, child-care, or other social services for the child in accordance with applicable laws, even if the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof; and

(2) other provisions that are appropriate or incidental to the proper administration of the compact.

ARTICLE VII. MEDICAL ASSISTANCE

(a) A child with special needs who resides in this state and who is the subject of an adoption assistance agreement with another state is entitled to receive a medical assistance identification from this state on the filing in the state medical assistance agency of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with rules of the state medical assistance agency, the adoptive parents, at least annually, shall show that the agreement is still in effect or has been renewed.

(b) The state medical assistance agency shall consider the holder of a medical assistance identification under this article as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on the holder's account in the same manner and under the same conditions and procedures as for other recipients of medical assistance.

(c) The state medical assistance agency shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department of Family and Protective Services for the coverage or benefits, if any, not provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed for those amounts. Services or benefit amounts covered under any insurance or other third-party medical contract or arrangement held by the child or the adoptive parents may not be reimbursed. The state medical assistance agency shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided under this subsection are for services for which there is no federal contribution or services that, if federally aided, are not provided by the residence state. The rules shall include procedures for obtaining prior approval for services in cases in which prior approval is required for the assistance.

(d) The submission of a false, misleading, or fraudulent claim for payment or reimbursement for services or benefits under this article or the making of a false, misleading, or fraudulent statement in connection with the claim is an offense under this subsection if the person submitting the claim or making the statement knows or should know that the claim or statement is false, misleading, or fraudulent. A person who commits an offense under this subsection may be liable for a fine not to exceed $10,000 or imprisonment for not more than two years, or both the fine and the imprisonment. An offense under this subsection that also constitutes an offense under other law may be punished under either this subsection or the other applicable law.

(e) This article applies only to medical assistance for children under adoption assistance agreements with states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance under adoption assistance agreements entered into by this state are eligible to receive the medical assistance in accordance with the laws and procedures that apply to the agreement.

ARTICLE VIII. FEDERAL PARTICIPATION

Consistent with federal law, the Department of Family and Protective Services and the Health and Human Services Commission, in connection with the administration of this compact or a compact authorized by this compact, shall include the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost in any state plan made under the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272), Titles IV-E and XIX of the Social Security Act, and other applicable federal laws. The Department of Family and Protective Services and the Health and Human Services Commission shall apply for and administer all relevant federal aid in accordance with law.

Added by Acts 1995, 74th Leg., ch. 846, Sec. 9, eff. June 16, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.103, eff. April 2, 2015.

Sec. 162.202. AUTHORITY OF DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

The Department of Family and Protective Services, with the concurrence of the Health and Human Services Commission, may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes of this subchapter. An interstate compact authorized by this subchapter has the force and effect of law.

Added by Acts 1995, 74th Leg., ch. 846, Sec. 9, eff. June 16, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.104, eff. April 2, 2015.

Sec. 162.203. COMPACT ADMINISTRATION

The commissioner of the Department of Family and Protective Services shall serve as the compact administrator. The administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact and any supplemental agreements entered into by this state. The commissioner of the Department of Family and Protective Services and the executive commissioner of the Health and Human Services Commission shall designate deputy compact administrators to represent adoption assistance services and medical assistance services provided under Title XIX of the Social Security Act.

Added by Acts 1995, 74th Leg., ch. 846, Sec. 9, eff. June 16, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.105, eff. April 2, 2015.

Sec. 162.204. SUPPLEMENTARY AGREEMENTS

The compact administrator may enter into supplementary agreements with appropriate officials of other states under the compact. If a supplementary agreement requires or authorizes the use of any institution or facility of this state or requires or authorizes the provision of a service by this state, the supplementary agreement does not take effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with rendering the service.

Added by Acts 1995, 74th Leg., ch. 846, Sec. 9, eff. June 16, 1995.

Sec. 162.205. PAYMENTS BY STATE

The compact administrator, subject to the approval of the chief state fiscal officer, may make or arrange for payments necessary to discharge financial obligations imposed on this state by the compact or by a supplementary agreement entered into under the compact.

Added by Acts 1995, 74th Leg., ch. 846, Sec. 9, eff. June 16, 1995.

Sec. 162.206. PENALTIES

A person who, under a compact entered into under this subchapter, knowingly obtains or attempts to obtain or aids or abets any person in obtaining, by means of a willfully false statement or representation or by impersonation or other fraudulent device, any assistance on behalf of a child or other person to which the child or other person is not entitled, or assistance in an amount greater than that to which the child or other person is entitled, commits an offense. An offense under this section is a Class B misdemeanor. An offense under this section that also constitutes an offense under other law may be punished under either this section or the other applicable law.

Added by Acts 1995, 74th Leg., ch. 846, Sec. 9, eff. June 16, 1995.

SUBCHAPTER D. ADOPTION SERVICES BY THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

Sec. 162.301. DEFINITIONS

In this subchapter:

(1) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department of Family and Protective Services and the prospective adoptive parents that specifies the nature and amount of any payment, services, or assistance to be provided under the agreement and stipulates that the agreement will remain in effect without regard to the state in which the prospective adoptive parents reside at any particular time.

(2) "Child" means a child who cannot be placed for adoption with appropriate adoptive parents without the provision of adoption assistance because of factors including ethnic background, age, membership in a minority or sibling group, the presence of a medical condition, or a physical, mental, or emotional disability.

(3) "Department" means the Department of Family and Protective Services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, Sec. 1, eff. Aug. 28, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.107, eff. April 2, 2015.

Sec. 162.304. FINANCIAL AND MEDICAL ASSISTANCE

(a) The department shall administer a program to provide adoption assistance for eligible children and enter into adoption assistance agreements with the adoptive parents of a child as authorized by Part E of Title IV of the federal Social Security Act, as amended (42 U.S.C. Section 673).

(b) The adoption of a child may be subsidized by the department. The need for and amount of the subsidy shall be determined by the department under its rules.

(b–1) Subject to the availability of funds, the department shall pay a $150 subsidy each month for the premiums for health benefits coverage for a child with respect to whom a court has entered a final order of adoption if the child:

(1) was in the conservatorship of the department at the time of the child's adoptive placement;

(2) after the adoption, is not **receiving** ~~eligible for~~ medical assistance under Chapter 32, Human Resources Code; and

(3) is younger than 18 years of age.

(b–2) The commissioner of the department shall adopt rules necessary to implement Subsection (b–1), including rules that:

(1) limit eligibility for the subsidy under that subsection to a child whose adoptive family income is less than 300 percent of the federal poverty level;

(2) provide for the manner in which the department shall pay the subsidy under that subsection; and

(3) specify any documentation required to be provided by an adoptive parent as proof that the subsidy is used to obtain and maintain health benefits coverage for the adopted child.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(3), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(3), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(3), eff. September 1, 2015.

~~(f) Subject to the availability of funds, the department shall work with the Health and Human Services Commission and the federal government to develop a program to provide medical assistance under Chapter 32, Human Resources Code, to children who were in the conservatorship of the department at the time of adoptive placement and need medical or rehabilitative care but do not qualify for adoption assistance.~~

(g) The commissioner of the department by rule shall provide that the maximum amount of the subsidy under Subsection (b) that may be paid to an adoptive parent of a child under an adoption assistance agreement is an amount that is equal to the amount that would have been paid to the foster parent of the child, based on the child's foster care service level on the date the department and the adoptive parent enter into the adoption assistance agreement. This subsection applies only to a child who, based on factors specified in rules of the department, the department determines would otherwise have been expected to remain in foster care until the child's 18th birthday and for whom this state would have made foster care payments for that care. Factors the department may consider in determining whether a child is eligible for the amount of the subsidy authorized by this subsection include the following:

(1) the child's mental or physical disability, age, and membership in a sibling group; and

(2) the number of prior placement disruptions the child has experienced.

(h) In determining the amount that would have been paid to a foster parent for purposes of Subsection (g), the department:

(1) shall use the minimum amount required to be paid to a foster parent for a child assigned the same service level as the child who is the subject of the adoption assistance agreement; and

(2) may not include any amount that a child-placing agency is entitled to retain under the foster care rate structure in effect on the date the department and the adoptive parent enter into the agreement.

(i) A child for whom a subsidy is provided under Subsection (b–1) for premiums for health benefits coverage and who does not receive any other subsidy under this section is not considered to be the subject of an adoption assistance agreement for any other purpose, including for determining eligibility for the exemption from payment of tuition and fees for higher education under Section 54.367, Education Code.

(j) The department shall keep records necessary to evaluate the adoption assistance program's effectiveness in encouraging and promoting the adoption of children.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, Sec. 4, eff. Aug. 28, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.09, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 267 (H.B. 2702), Sec. 2(a), eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 4(a), eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(15), eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. 359 (S.B. 32), Sec. 11, eff. January 1, 2012. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 16, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(3), eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 8, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 72, Secs. 1, 3, eff. Sept. 1, 2019.

Section 5 of Acts 2019, 86th Leg., H.B. 72 states—

"The Health and Human Services Commission is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, implement a provision of this Act using other appropriations available for that purpose."

Sec. 162.3041. CONTINUATION OF ASSISTANCE AFTER CHILD'S 18TH BIRTHDAY

(a) The department shall, in accordance with department rules, offer adoption assistance after a child's 18th birthday to the child's adoptive parents under an existing adoption assistance agreement entered into under Section 162.304 until:

(1) the first day of the month of the child's 21st birthday if the department determines, as provided by department rules, that:

(A) the child has a mental or physical disability that warrants the continuation of that assistance;

(B) the child, or the child's adoptive parent on behalf of the child, has applied for federal benefits under the supplemental security income program (42 U.S.C. Section 1381 et seq.), as amended; and

(C) the child's adoptive parents are providing the child's financial support; or

(2) if the child does not meet the requirements of Subdivision (1), the earlier of:

(A) the date the child ceases to regularly attend high school or a vocational or technical program;

(B) the date the child obtains a high school diploma or high school equivalency certificate;

(C) the date the child's adoptive parents stop providing financial support to the child; or

(D) the first day of the month of the child's 19th birthday.

(a–1) Notwithstanding Subsection (a), if the department first entered into an adoption assistance agreement with a child's adoptive parents after the child's 16th birthday, the department shall, in accordance with rules adopted by the commissioner of the department, offer adoption assistance after the child's 18th birthday to the child's adoptive parents under an existing adoption agreement until the last day of the month of the child's 21st birthday, provided the child is:

(1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate;

(2) regularly attending an institution of higher education or a postsecondary vocational or technical program;

(3) participating in a program or activity that promotes, or removes barriers to, employment;

(4) employed for at least 80 hours a month; or

(5) incapable of doing any of the activities described by Subdivisions (1)–(4) due to a documented medical condition.

(b) In determining whether a child meets the requirements of Subdivision (a)(1), the department may conduct an assessment of the child's mental or physical disability or may contract for the assessment to be conducted.

(c) The department and any person with whom the department contracts to conduct an assessment under Subsection (b) shall:

(1) inform the adoptive parents of the child for whom the assessment is conducted of the application requirement under Subsection (a)(1)(B) for federal benefits for the child under the supplemental security income program (42 U.S.C. Section 1381 et seq.), as amended;

(2) provide assistance to the adoptive parents and the child in preparing an application for benefits under that program; and

(3) provide ongoing consultation and guidance to the adoptive parents and the child throughout the eligibility determination process for benefits under that program.

(d) The department is not required to provide adoption assistance benefits under Subsection (a) or (a–1) unless funds are appropriated to the department specifically for purposes of those subsections. If the legislature does not appropriate sufficient money to provide adoption assistance to the adoptive parents of all children described by Subsection (a), the department shall provide adoption assistance only to the adoptive parents of children described by Subsection (a)(1).

Added by Acts 2001, 77th Leg., ch. 1449, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 4, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(a), eff. October 1, 2010. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 17, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 9, eff. Sept. 1, 2017.

Sec. 162.306. POSTADOPTION SERVICES

(a) The department may provide services after adoption to adoptees and adoptive families for whom the department provided services before the adoption.

(b) The department may provide services under this section directly or through contract.

(c) The services may include financial assistance, respite care, placement services, parenting programs, support groups, counseling services, crisis intervention, and medical aid.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, Sec. 6, eff. Aug. 28, 1995.

Sec. 162.3085. ADOPTIVE PLACEMENT IN COMPLIANCE WITH FEDERAL LAW REQUIRED

The department or a licensed child-placing agency making an adoptive placement shall comply with the Multiethnic Placement Act of 1994 (42 U.S.C. Section 1996b).

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 18, eff. September 1, 2015.

SUBCHAPTER E. VOLUNTARY ADOPTION REGISTRIES

Sec. 162.401. PURPOSE

The purpose of this subchapter is to provide for the establishment of mutual consent voluntary adoption registries through which adoptees, birth parents, and biological siblings may voluntarily locate each other. It is not the purpose of this subchapter to inhibit or prohibit persons from locating each other through other legal means or to inhibit or affect in any way the provision of postadoptive services and education, by adoption agencies or others, that go further than the procedures set out for registries established under this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Little v. Smith, 943 S.W.2d 414 (Tex. 1997). "Under section 162.007, the adoption records are to include information about the biological parents' health and medical history; any genetic diseases or disorders; their height, weight, eye, and hair color; nationality and ethnic background; general levels of education; religious backgrounds; and psychological, psychiatric, or social evaluations. *Id.* § 162.007(d). However, the identity of the biological parents must be edited from the public records. . . . To strike a balance between the respective desires of the biological parents and their offspring to either retain anonymity or to learn the identity of one another, the Legislature has implemented a comprehensive voluntary registration process. *See* Tex. Fam. Code §§ 162.401–.422."

Sec. 162.402. DEFINITIONS

In this subchapter:

(1) "Administrator" means the administrator of a mutual consent voluntary adoption registry established under this subchapter.

(2) "Adoptee" means a person 18 years of age or older who has been legally adopted in this state or another state or country.

(3) "Adoption" means the act of creating the legal relationship of parent and child between a person and a child who is not the biological child of that person. The term does not include the act of establishing the legal relationship of parent and child between a man and a child through proof of paternity or voluntary legitimation proceedings.

(4) "Adoption agency" means a person, other than a natural parent or guardian of a child, who plans for the placement of or places a child in the home of a prospective adoptive parent.

(5) "Adoptive parent" means an adult who is a parent of an adoptee through a legal process of adoption.

(6) "Alleged father" means a man who is not deemed by law to be or who has not been adjudicated to be the biological father of an adoptee and who claims or is alleged to be the adoptee's biological father.

(7) "Authorized agency" means a public agency authorized to care for or to place children for adoption or a private entity approved for that purpose by the department through a license, certification, or other means. The term includes a licensed child-placing agency or a previously licensed child-placing agency that has ceased operations and has transferred its adoption records to the vital statistics unit or an agency authorized by the department to place children for adoption and a licensed child-placing agency that has been acquired by, merged with, or otherwise succeeded by an agency authorized by the department to place children for adoption.

(8) "Biological parent" means a man or woman who is the father or mother of genetic origin of a child.

(9) "Biological siblings" means persons who share a common birth parent.

(10) "Birth parent" means:

(A) the biological mother of an adoptee;

(B) the man adjudicated or presumed under Chapter 151 to be the biological father of an adoptee; and

(C) a man who has signed a consent to adoption, affidavit of relinquishment, affidavit of waiver of interest in child, or other written instrument releasing the adoptee for adoption, unless the consent, affidavit, or other instrument includes a sworn refusal to admit or a denial of paternity. The term includes a birth mother and birth father but does not include a person adjudicated by a court of competent jurisdiction as not being the biological parent of an adoptee.

(11) "Central registry" means the mutual consent voluntary adoption registry established and maintained by the vital statistics unit under this subchapter.

(12) "Department" means the Department of Family and Protective Services.

(13) "Registry" means a mutual consent voluntary adoption registry established under this subchapter.

(14) "Vital statistics unit" means the vital statistics unit of the Department of State Health Services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 1, 11, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 19, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.110, eff. April 2, 2015.

Sec. 162.403. ESTABLISHMENT OF VOLUNTARY ADOPTION REGISTRIES

(a) The vital statistics unit shall establish and maintain a mutual consent voluntary adoption registry.

(b) Except as provided by Subsection (c), an agency authorized by the department to place children for adoption and an association comprised exclusively of those agencies may establish a mutual consent voluntary adoption registry. An agency may contract with any other agency authorized by the department to place children for adoption or with an association comprised exclusively of those agencies to perform registry services on its behalf.

(c) An authorized agency that did not directly or by contract provide registry services as required by this subchapter on January 1, 1984, may not provide its own registry service. The vital statistics unit shall operate through the central registry those services for agencies not permitted to provide a registry under this section.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 20, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.111, eff. April 2, 2015.

Sec. 162.404. REQUIREMENT TO SEND INFORMATION TO CENTRAL REGISTRY

An authorized agency that is permitted to provide a registry under this subchapter or that participates in a mutual consent voluntary adoption registry with an association of authorized agencies shall send to the central registry a duplicate of all information the registry maintains in the agency's registry or sends to the registry in which the agency participates.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 21, eff. Sept. 1, 1997.

Sec. 162.405. DETERMINATION OF APPROPRIATE REGISTRY

(a) The administrator of the central registry shall determine the appropriate registry to which an applicant is entitled to apply.

(b) On receiving an inquiry by an adoptee, birth parent, or sibling who has provided satisfactory proof of age and identity and paid all required inquiry fees, the administrator of the central registry shall review the information on file in the central index and consult with the administrators of other registries in the state to determine the identity of any appropriate registry through which the adoptee, birth parent, or sibling may register.

(c) Each administrator shall, not later than the 30th day after the date of receiving an inquiry from the administrator of the central registry, respond in writing to the inquiry that the registrant was not placed for adoption by an agency served by that registry or that the registrant was placed for adoption by an agency served by that registry. If the registrant was placed for adoption by an agency served by the registry, the administrator shall file a report with the administrator of the central registry including:

(1) the name of the adopted child as shown in the final adoption decree;

(2) the birth date of the adopted child;

(3) the docket number of the adoption suit;

(4) the identity of the court that granted the adoption;

(5) the date of the final adoption decree;

(6) the identity of the agency, if any, through which the adopted child was placed; and

(7) the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee.

(d) After completing the investigation, the administrator of the central registry shall issue an official certificate stating:

(1) the identity of the registry through which the adoptee, birth parent, or biological sibling may apply for registration, if known; or

(2) if the administrator cannot make a conclusive determination, that the adoptee, birth parent, or biological sibling is entitled to apply for registration through the central registry.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 79, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 968, Sec. 2, eff. Sept. 1, 1995.

Sec. 162.406. REGISTRATION ELIGIBILITY

(a) An adoptee who is 18 years of age or older may apply to a registry for information about the adoptee's birth parents and biological siblings.

(b) A birth parent who is 18 years of age or older may apply to a registry for information about an adoptee who is a child by birth of the birth parent.

(c) An alleged father who is 18 years of age or older and who acknowledges paternity but is not, at the time of application, a birth father may register as a birth father but may not otherwise be recognized as a birth father for the purposes of this subchapter unless:

(1) the adoptee's birth mother in her application identifies him as the adoptee's biological father; and

(2) additional information concerning the adoptee obtained from other sources is not inconsistent with his claim of paternity.

(d) A biological sibling who is 18 years of age or older may apply to a registry for information about the person's adopted biological siblings.

(e) Only birth parents, adoptees, and biological siblings may apply for information through a registry.

(f) A person, including an authorized agency, may not apply for information through a registry as an agent, attorney, or representative of an adoptee, birth parent, or biological sibling.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 3, eff. Sept. 1, 1995.

Sec. 162.407. REGISTRATION

(a) The administrator shall require each registration applicant to sign a written application.

(b) An adoptee adopted or placed through an authorized agency may register through the registry maintained by that agency or the registry to which the agency has delegated registry services or through the central registry maintained by the vital statistics unit.

(c) Birth parents and biological siblings shall register through:

(1) the registry of the authorized agency through which the adoptee was adopted or placed; or

(2) the central registry.

(d) The administrator may not accept an application for registration unless the applicant:

(1) provides proof of identity as provided by Section 162.408;

(2) establishes the applicant's eligibility to register; and

(3) pays all required registration fees.

(e) A registration remains in effect until the 99th anniversary of the date the registration is accepted unless a shorter period is specified by the applicant or the registration is withdrawn before that time.

(f) A registrant may withdraw the registrant's registration in writing without charge at any time.

(g) After a registration is withdrawn or expires, the registrant shall be treated as if the person has not previously registered.

(h) A completed registry application must be accepted or rejected before the 46th day after the date the application is received. If an application is rejected, the administrator shall provide the applicant with a written statement of the reason for the rejection.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 22, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.112, eff. April 2, 2015.

Sec. 162.408. PROOF OF IDENTITY

The rules and minimum standards of the Department of State Health Services for the vital statistics unit must provide for proof of identity in order to facilitate the purposes of this subchapter and to protect the privacy rights of adoptees, adoptive parents, birth parents, biological siblings, and their families.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 23, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.113, eff. April 2, 2015.

Sec. 162.409. APPLICATION

(a) An application must contain:

(1) the name, address, and telephone number of the applicant;

(2) any other name or alias by which the applicant has been known;

(3) the age, date of birth, and place of birth of the applicant;

(4) the original name of the adoptee, if known;

(5) the adoptive name of the adoptee, if known;

(6) a statement that the applicant is willing to allow the applicant's identity to be disclosed to a registrant who is eligible to learn the applicant's identity;

(7) the name, address, and telephone number of the agency or other entity, organization, or person placing the adoptee for adoption, if known, or, if not known, a statement that the applicant does not know that information;

(8) an authorization to the administrator and the administrator's designees to inspect all vital statistics records, court records, and agency records, including confidential records, relating to the birth, adoption, marriage, and divorce of the applicant or to the birth and death of any child or sibling by birth or adoption of the applicant;

(9) the specific address to which the applicant wishes notice of a successful match to be mailed;

(10) a statement that the applicant either does or does not consent to disclosure of identifying information about the applicant after the applicant's death;

(11) a statement that the registration is to be effective for 99 years or for a stated shorter period selected by the applicant; and

(12) a statement that the adoptee applicant either does or does not desire to be informed that registry records indicate that the applicant has a biological sibling who has registered under this subchapter.

(b) The application may contain the applicant's social security number if the applicant, after being advised of the right not to supply the number, voluntarily furnishes it.

(c) The application of a birth parent must include:

(1) the original name and date of birth or approximate date of birth of each adoptee with respect to whom the parent is registering;

(2) the names of all other birth children, including maiden names, aliases, dates and places of birth, and names of the birth parents;

(3) each name known or thought by the applicant to have been used by the adoptee's other birth parent;

(4) the last known address of the adoptee's other birth parent; and

(5) other available information through which the other birth parent may be identified.

(d) The application of a biological sibling must include:

(1) a statement explaining the applicant's basis for believing that the applicant has one or more biological siblings;

(2) the names, including maiden and married names, and aliases of all the applicant's siblings by birth and adoption and their dates and places of birth, if known;

(3) the names of the applicant's legal parents;

(4) the names of the applicant's birth parents, if known; and

(5) any other information known to the applicant through which the existence and identity of the applicant's biological siblings can be confirmed.

(e) An application may also contain additional information through which the applicant's identity and eligibility to register may be ascertained.

(f) The administrator shall assist the applicant in filling out the application if the applicant is unable to complete the application without assistance, but the administrator may not furnish the applicant with any substantive information necessary to complete the application.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 5, eff. Sept. 1, 1995.

Sec. 162.411. FEES

(a) The costs of establishing, operating, and maintaining a registry may be recovered in whole or in part through users' fees charged to applicants and registrants.

(b) Each registry shall establish a schedule of fees for services provided by the registry. The fees shall be reasonably related to the direct and indirect costs of establishing, operating, and maintaining the registry.

(c) A fee may not be charged for withdrawing a registration.

(d) The fees collected by the vital statistics unit shall be deposited in a special fund in the general revenue fund. Funds in the special fund may be appropriated only for the administration of the central registry.

(e) The administrator may waive users' fees in whole or in part if the applicant provides satisfactory proof of financial inability to pay the fees.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 24, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.114, eff. April 2, 2015.

Sec. 162.412. SUPPLEMENTAL INFORMATION

(a) A registrant may amend the registrant's registration and submit additional information to the administrator. A registrant shall notify the administrator of any change in the registrant's name or address that occurs after acceptance of the application.

(b) The administrator does not have a duty to search for a registrant who fails to register a change of name or address.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.413. COUNSELING

The applicant must participate in counseling for not less than one hour with a social worker or mental health professional with expertise in postadoption counseling after the administrator has accepted the application for registration and before the release of confidential information.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 7, eff. Sept. 1, 1995.

Sec. 162.414. MATCHING PROCEDURES

(a) The administrator shall process each registration in an attempt to match the adoptee and the adoptee's birth parents or the adoptee and the adoptee's biological siblings.

(b) The administrator shall determine that there is a match if the adult adoptee and the birth mother or the birth father have registered or if a biological sibling has registered.

(c) To establish or corroborate a match, the administrator shall request confirmation of a possible match from the vital statistics unit. If the agency operating the registry has in its own records sufficient information through which the match may be confirmed, the administrator may, but is not required to, request confirmation from the vital statistics unit. The vital statistics unit may confirm or deny the match without breaching the duty of confidentiality to the adoptee, adoptive parents, birth parents, or biological siblings and without a court order.

(d) To establish a match, the administrator may also request confirmation of a possible match from the agency, if any, that has possession of records concerning the adoption of an adoptee or from the court that granted the adoption, the hospital where the adoptee or any biological sibling was born, the physician who delivered the adoptee or biological sibling, or any other person who has knowledge of the relevant facts. The agency, court, hospital, physician, or person with knowledge may confirm or deny the

match without breaching any duty of confidentiality to the adoptee, adoptive parents, birth parents, or biological siblings.

(e) If a match is denied by a source contacted under Subsection (d), the administrator shall make a full and complete investigation into the reliability of the denial. If the match is corroborated by other reliable sources and the administrator is satisfied that the denial is erroneous, the administrator may make disclosures but shall report to the adoptee, birth parents, and biological siblings involved that the match was not confirmed by all information sources.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 25, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.115, eff. April 2, 2015.

Sec. 162.416. DISCLOSURE OF IDENTIFYING INFORMATION

(a) When a match has been made and confirmed to the administrator's satisfaction, the administrator shall mail to each registrant, at the registrant's last known address, by fax or registered or certified mail, return receipt requested, delivery restricted to addressee only, a written notice:

(1) informing the registrant that a match has been made and confirmed;

(2) reminding the registrant that the registrant may withdraw the registration before disclosures are made, if desired; and

(3) notifying the registrant that before any identifying disclosures are made, the registrant must:

(A) sign a written consent to disclosure that allows the disclosure of identifying information about the other registrants to the registrant and allows the disclosure of identifying information about the registrant to other registrants;

(B) participate in counseling for not less than one hour with a social worker or mental health professional who has expertise in postadoption counseling; and

(C) provide the administrator with written certification that the counseling required under Subdivision (B) has been completed.

(b) Identifying information about a registrant shall be released without the registrant's having consented after the match to disclosure if the registrant is dead, the registrant's registration was valid at the time of death, and the registrant had in writing specifically authorized the postdeath disclosure in the registrant's application or in a supplemental statement filed with the administrator.

(c) Identifying information about a deceased birth parent may not be released until each surviving child of the deceased birth parent is an adult or until each child's surviving parent, guardian, managing conservator, or legal custodian consents in writing to the disclosure.

(d) The administrator shall prepare and release written disclosure statements identifying information about each of the registrants if the registrants complied with Subsection (a) and, before the 60th day after the date notification of match was mailed, the registrant or registrants have not withdrawn their registrations.

(e) If the administrator establishes that a match cannot be made because of the death of an adoptee, birth parent, or biological sibling, the administrator shall promptly notify the affected registrant. The administrator shall disclose the reason why a match cannot be made and may disclose nonidentifying information concerning the circumstances of the person's death.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 9, eff. Sept. 1, 1995.

Sec. 162.419. REGISTRY RECORDS CONFIDENTIAL

(a) All applications, registrations, records, and other information submitted to, obtained by, or otherwise acquired by a registry are confidential and may not be disclosed to any person or entity except in the manner authorized by this subchapter.

(b) Information acquired by a registry may not be disclosed under freedom of information or sunshine legislation, rules, or practice.

(c) A person may not file or prosecute a class action litigation to force a registry to disclose identifying information.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.420. RULEMAKING

(a) The executive commissioner of the Health and Human Services Commission shall make rules and adopt minimum standards for the Department of State Health Services to:

(1) administer the provisions of this subchapter; and

(2) ensure that each registry respects the right to privacy and confidentiality of an adoptee, birth parent, and biological sibling who does not desire to disclose the person's identity.

(b) The Department of State Health Services shall conduct a comprehensive review of all rules and standards adopted under this subchapter not less than every six years.

(c) In order to provide the administrators an opportunity to review proposed rules and standards and send written suggestions to the executive commissioner of the Health and Human Services Commission, the executive commissioner shall, before adopting rules and minimum standards, send a copy of the proposed rules and standards not less than 60 days before the date they take effect to:

(1) the administrator of each registry established under this subchapter; and

(2) the administrator of each agency authorized by the department to place children for adoption.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 26, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.116, eff. April 2, 2015.

Sec. 162.421. PROHIBITED ACTS; CRIMINAL PENALTIES

(a) This subchapter does not prevent the Department of State Health Services from making known to the public, by appropriate means, the existence of voluntary adoption registries.

(b) Information received by or in connection with the operation of a registry may not be stored in a data bank used for any purpose other than operation of the registry.

(c) A person commits an offense if the person knowingly or recklessly discloses information from a registry application, registration, record, or other information submitted to, obtained by, or otherwise acquired by a registry in violation of this subchapter. This subsection may not be construed to penalize

the disclosure of information from adoption agency records. An offense under this subsection is a felony of the second degree.

(d) A person commits an offense if the person with criminal negligence causes or permits the disclosure of information from a registry application, registration, record, or other information submitted to, obtained by, or otherwise acquired by a registry in violation of this subchapter. This subsection may not be construed to penalize the disclosure of information from adoption agency records. An offense under this subsection is a Class A misdemeanor.

(e) A person commits an offense if the person impersonates an adoptee, birth parent, or biological sibling with the intent to secure confidential information from a registry established under this subchapter. An offense under this subsection is a felony of the second degree.

(f) A person commits an offense if the person impersonates an administrator, agent, or employee of a registry with the intent to secure confidential information from a registry established under this subchapter. An offense under this subsection is a felony of the second degree.

(g) A person commits an offense if the person, with intent to deceive and with knowledge of the statement's meaning, makes a false statement under oath in connection with the operation of a registry. An offense under this subsection is a felony of the third degree.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 27, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.117, eff. April 2, 2015.

Sec. 162.422. IMMUNITY FROM LIABILITY

(a) The Department of State Health Services or authorized agency establishing or operating a registry is not liable to any person for obtaining or disclosing identifying information about a birth parent, adoptee, or biological sibling within the scope of this subchapter and under its provisions.

(b) An employee or agent of the Department of State Health Services or of an authorized agency establishing or operating a registry under this subchapter is not liable to any person for obtaining or disclosing identifying information about a birth parent, adoptee, or biological sibling within the scope of this subchapter and under its provisions.

(c) A person or entity furnishing information to the administrator or an employee or agent of a registry is not liable to any person for disclosing information about a birth parent, adoptee, or biological sibling within the scope of this subchapter and under its provisions.

(d) A person or entity is not immune from liability for performing an act prohibited by Section 162.421.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 28, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.118, eff. April 2, 2015.

SUBCHAPTER F. ADOPTION OF AN ADULT

Sec. 162.501. ADOPTION OF ADULT

The court may grant the petition of an adult residing in this state to adopt another adult according to this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

Dampier v. Williams, 493 S.W.3d 118 (Tex. App.—Houston [1st Dist.] 2016, no pet.). "With the legal procedures in place for an adoptive parent to either (1) legally adopt the adult or (2) provide for that adult in his will, we are unwilling . . . to hold that an adult may be adopted by estoppel."

Sec. 162.502. JURISDICTION

The petitioner shall file a suit to adopt an adult in the district court or a statutory county court granted jurisdiction in family law cases and proceedings by Chapter 25, Government Code, in the county of the petitioner's residence.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.503. REQUIREMENTS OF PETITION

(a) A petition to adopt an adult shall be entitled "In the Interest of _____, An Adult."

(b) If the petitioner is married, both spouses must join in the petition for adoption.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.504. CONSENT

A court may not grant an adoption unless the adult consents in writing to be adopted by the petitioner.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

COMMENTS

There is no requirement to notify the prospective adult adoptee's legal parents nor to terminate the legal parents' rights.

Sec. 162.505. ATTENDANCE REQUIRED

The petitioner and the adult to be adopted must attend the hearing. For good cause shown, the court may waive this requirement, by written order, if the petitioner or adult to be adopted is unable to attend.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 162.506. ADOPTION ORDER

(a) The court shall grant the adoption if the court finds that the requirements for adoption of an adult are met.

(b) Notwithstanding that both spouses have joined in a petition for the adoption of an adult as required by Section 162.503(b), the court may grant the adoption of the adult to both spouses or, on request of the spouses, to only one spouse.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 555, Sec. 1, eff. June 20, 2003.

COMMENTS

This section creates ambiguity because it is not clear whose names will appear on the birth certificate requested after the adult adoption is granted.

PRACTICE TIPS

In the order of adoption, if only one person is petitioning to adopt the adult or the spouse declines to be listed on the new birth certificate, designate the adoptive parent as either mother or father, and then state who is the other legal parent (may be the original person on the birth certificate). If no other parent is designated, then the adoptee may face a challenge in establishing inheritance rights from a remaining legal parent.

Sec. 162.507. EFFECT OF ADOPTION

(a) The adopted adult is the son or daughter of the adoptive parents for all purposes.

(b) The adopted adult is entitled to inherit from and through the adopted adult's adoptive parents as though the adopted adult were the biological child of the adoptive parents.

(c) The adopted adult may not inherit from or through the adult's biological parent. A biological parent may not inherit from or through an adopted adult.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 169 (H.B. 204), Sec. 1, eff. September 1, 2005.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

Sec. 162.601. INCENTIVES FOR LICENSED CHILD-PLACING AGENCIES

(a) Subject to the availability of funds, the Department of Family and Protective Services shall pay, in addition to any other amounts due, a monetary incentive to a licensed child-placing agency for the completion of an adoption:

(1) of a child, as defined by Section 162.301, receiving or entitled to receive foster care at department expense; and

(2) arranged with the assistance of the agency.

(b) The incentive may not exceed 25 percent of the amount the department would have spent to provide one year of foster care for the child, determined according to the child's level of care at the time the adoption is completed.

(c) For purposes of this section, an adoption is completed on the date on which the court issues the adoption order.

Added by Acts 1997, 75th Leg., ch. 1309, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.119, eff. April 2, 2015.

Sec. 162.602. DOCUMENTATION TO ACCOMPANY PETITION FOR ADOPTION OR ANNULMENT OR REVOCATION OF ADOPTION

At the time a petition for adoption or annulment or revocation of adoption is filed, the petitioner shall also file completed documentation that may be used by the clerk of the court, at the time the petition is granted, to comply with Section 192.009, Health and Safety Code, and Section 108.003.

Added by Acts 2003, 78th Leg., ch. 1128, Sec. 5, eff. Sept. 1, 2003.

Sec. 162.603. POST-ADOPTION SUPPORT INFORMATION PROVIDED BY LICENSED CHILD-PLACING AGENCIES

A licensed child-placing agency shall provide prospective adoptive parents with information regarding:

(1) the community services and other resources available to support a parent who adopts a child; and

(2) the options available to the adoptive parent if the parent is unable to care for the adopted child.

Added by Acts 2017, 85th Leg., R.S., Ch. 985 (H.B. 834), Sec. 2, eff. Sept. 1, 2017.

SUBCHAPTER H. EMBRYO DONATION INFORMATION

Sec. 162.701. DEFINITIONS

In this subchapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Embryo donation" has the meaning assigned by Section 159.011, Occupations Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 331 (H.B. 785), Sec. 2, eff. Sept. 1, 2017.

Sec. 162.702. INFORMATION REGARDING EMBRYO DONATION

The department shall post information regarding embryo donation on the department's Internet website. The information must include contact information for nonprofit organizations that facilitate embryo donation.

Added by Acts 2017, 85th Leg., R.S., Ch. 331 (H.B. 785), Sec. 2, eff. Sept. 1, 2017.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. ASSOCIATE JUDGE

Sec. 201.001. APPOINTMENT

(a) A judge of a court having jurisdiction of a suit under this title, Title 1, Chapter 45, or Title 4 may appoint a full-time or part-time associate judge to perform the duties authorized by this chapter if the commissioners court of a county in which the court has jurisdiction authorizes the employment of an associate judge.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the associate judge's appointment.

(c) If more than one court in a county has jurisdiction of a suit under this title, Title 1, Chapter 45, or Title 4 the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made with the unanimous approval of all the judges under whom the associate judge serves.

(e) This section does not apply to an associate judge appointed under Subchapter B or C.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1258, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 197 (S.B. 812), Sec. 1, eff. September 1, 2015.

Sec. 201.002. QUALIFICATIONS

(a) Except as provided by Subsection (b), to be eligible for appointment as an associate judge, a person must meet the requirements and qualifications to serve as a judge of the court or courts for which the associate judge is appointed.

(b) To be eligible for appointment as an associate judge under Subchapter B or C, a person must meet the requirements and qualifications established under those subchapters.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 44 (S.B. 271), Sec. 1, eff. September 1, 2007.

Sec. 201.003. COMPENSATION

(a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

(d) This section does not apply to an associate judge appointed under Subchapter B or C.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1258, Sec. 3, eff. Sept. 1, 2003.

Sec. 201.004. TERMINATION OF ASSOCIATE JUDGE

(a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts which the associate judge serves.

(d) This section does not apply to an associate judge appointed under Subchapter B or C.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1258, Sec. 4, eff. Sept. 1, 2003.

Sec. 201.005. CASES THAT MAY BE REFERRED

(a) Except as provided by this section, a judge of a court may refer to an associate judge any aspect of a suit over which the court has jurisdiction under this title, Title 1, Chapter 45, or Title 4, including any matter ancillary to the suit.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

(d) The requirements of Subsections (b) and (c) shall apply whenever a judge has authority to refer the trial of a suit under this title, Title 1, Chapter 45, or Title 4 to an associate judge, master, or other assistant judge regardless of whether the assistant judge is appointed under this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 4, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 197 (S.B. 812), Sec. 2, eff. September 1, 2015.

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Townsend v. Vasquez, 569 S.W.3d 796 (Tex. App.—Houston [1st Dist.] Dec. 20, 2018, pet. denied). "Comparing the provisions that create, empower, compensate, and govern termination of associate judges to the analogous provisions for the judge of the County Court at Law No. 3, we hold that a county court at law judge who sits for a district-court judge is not an 'associate judge' as contemplated by Family Code section 201.005. The two offices are governed by distinct provisions. And the [county court at law] judge here could hear the bench trial on the merits under Government Code section 74.094(a), without need of the authority contemplated by the Family Code's referral-unless-objected-to provisions."

Duffey v. Duffey, No. 14-16-00144-CV, 2017 WL 6045569, at *8 (Tex. App.—Houston [14th Dist.] Dec. 7, 2017, pet. filed) (mem. op.). The trial court had a duty to enforce the signed Rule 11 agreement, which waived any objection to an associate judge conducting the trial on the merits and the right to appeal the associate judge's rulings and recommendations to the referring court. "[The party] waived her right to object to a trial before the associate judge, and she had no right to appeal the associate judge's order to the presiding judge of the trial court."

In re J.A.P., 510 S.W.3d 722, 724 (Tex. App.—San Antonio 2016, no pet.). The right to object to a referral to an associate judge under section 201.005 is separate and distinct from the right to waive a de novo hearing under section 201.015.

In re Baker, 495 S.W.3d 393, 396–97 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). The waiver of objection to the associate judge hearing the original trial does not affect the right to object to a trial by the associate judge after the case has been remanded for a partial new trial. "If one of the parties files a timely written objection to the associate judge presiding over trial, the case shall be tried by the referring judge rather than the associate judge. . . . A trial court has no discretion to overrule a timely objection to the referral."

Szanyi v. Gibson, No. 01-15-00895-CV, 2016 WL 3269975, at *3 (Tex. App.—Houston [1st Dist.] June 14, 2016, no pet.) (mem. op.). "Section 201.005 does not require that the notice include notifications that the judge is an associate judge or that the parties have ten days to object; it only requires notice 'that the associate judge will hear the trial.'"

In re T.S., 191 S.W.3d 736, 737–39 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). "We conclude that the failure to object under section 201.005(c) of the Family Code [does] not deprive the parents of their right to appeal the associate judge's report under section 201.015 and 201.2042." Section 201.015 "allows an appeal by 'a party' who satisfies the procedural requirements of that section; it does not exclude parties who failed to object to the referral of the trial to an associate judge."

Sec. 201.006. ORDER OF REFERRAL

(a) In referring a case to an associate judge, the judge of the referring court shall render:

(1) an individual order of referral; or

(2) a general order of referral specifying the class and type of cases to be heard by the associate judge.

(b) The order of referral may limit the power or duties of an associate judge.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 201.007. POWERS OF ASSOCIATE JUDGE

(a) Except as limited by an order of referral, an associate judge may:

(1) conduct a hearing;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue a summons for:

(A) the appearance of witnesses; and

(B) the appearance of a parent who has failed to appear before an agency authorized to conduct an investigation of an allegation of abuse or neglect of a child after receiving proper notice;

(6) examine a witness;

(7) swear a witness for a hearing;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) recommend an order to be rendered in a case;

(11) regulate all proceedings in a hearing before the associate judge;

(12) order the attachment of a witness or party who fails to obey a subpoena;

(13) order the detention of a witness or party found guilty of contempt, pending approval by the referring court as provided by Section 201.013;

(14) without prejudice to the right to a de novo hearing before the referring court under Section 201.015 and subject to Subsection (c), render and sign:

(A) a final order agreed to in writing as to both form and substance by all parties;

(B) a final default order;

(C) a temporary order; or

(D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party's appearance at the final hearing;

(15) take action as necessary and proper for the efficient performance of the associate judge's duties; and

(16) render and sign a final order if the parties waive the right to a de novo hearing before the referring court under Section 201.015 in writing before the start of a hearing conducted by the associate judge.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

(c) A final order described by Subsection (a)(14) becomes final after the expiration of the period described by Section 201.015(a) if a party does not request a de novo hearing in accordance with that section. An order described by Subsection (a)(14) or (16) that is rendered and signed by an associate judge constitutes an order of the referring court.

(d) An answer filed by or on behalf of a party who previously filed a waiver described in Subsection (a)(14)(D) shall revoke that waiver.

(e) An order signed before May 1, 2017, by an associate judge under Subsection (a)(16) is a final order rendered as of the date the order was signed.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 476, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 550 (H.B. 1179), Sec. 1, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 839 (H.B. 930), Sec. 1, eff. June 15, 2007. Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 5, eff. September 1, 2007. Acts 2017, 85th Leg., R.S., Ch. 279 (H.B. 2927), Sec. 1, eff. May 29, 2017. Acts 2017, 85th Leg., R.S., Ch. 912 (S.B. 1329), Sec. 1.03(a), eff. Sept. 1, 2017.

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In re A.G.D.M., 533 S.W.3d 546, 547 (Tex. App.—Amarillo 2017, no pet.) "While [the] statute permits the referring court to reduce the § 201.007 powers assigned to the associate judge, [we find] no statute authorizing the referring court to grant an associate judge more powers than those enumerated in § 201.007."

Gerke v. Kantara, 492 S.W.3d 791 (Tex. App.—Houston [1st Dist.] 2016, no pet.). Even in cases where parties waive their right to a de novo appeal under subsection 201.007(a)(16), unless provided by subsection 201.007(a)(14), an order signed by an associate judge but not approved by a presiding judge is not a final order.

Chacon v. Chacon, 222 S.W.3d 909, 913 (Tex. App.—El Paso 2007, no pet.). "In section 201.007, the legislature has not given associate judges the power to render judgment outside the context of an agreed order or default."

In re M.K.R., 216 S.W.3d 58, 64 (Tex. App.—Fort Worth 2007, no pet.). This section does not require an order separate from the associate judge's report, only approval of that report by the referring court.

Sec. 201.008. ATTENDANCE OF BAILIFF

A bailiff may attend a hearing by an associate judge if directed by the referring court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 201.009. COURT REPORTER; RECORD

(a) A court reporter may be provided during a hearing held by an associate judge appointed under this chapter. A court reporter is required to be provided when the associate judge presides over a jury trial or a contested final termination hearing.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing, if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may tax the expense of preserving the record under Subsection (c) as costs.

(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record in addition to witnesses or other matters presented under Section 201.015.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 6, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 839 (H.B. 930), Sec. 2, eff. June 15, 2007. Acts 2007, 80th Leg., R.S., Ch. 839 (H.B. 930), Sec. 3, eff. June 15, 2007. Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 1, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 24, eff. June 19, 2009.

Sec. 201.010. WITNESS

(a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

(1) failed to appear before an associate judge after being summoned; or

(2) improperly refused to answer questions if the refusal has been certified to the court by the associate judge.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 201.011. REPORT

(a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order. The associate judge's report must be in writing in the form directed by the referring court.

(b) After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(c) Notice may be given to the parties:

(1) in open court, by an oral statement or a copy of the associate judge's written report, including any proposed order;

(2) by certified mail, return receipt requested; or

(3) by facsimile transmission.

(d) There is a rebuttable presumption that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile transmission.

(e) After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 464, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 2, eff. September 1, 2007.

Sec. 201.012. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE REFERRING COURT

(a) Notice of the right to a de novo hearing before the referring court shall be given to all parties.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 3, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 4, eff. September 1, 2007.

Sec. 201.013. ORDER OF COURT

(a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) Except as provided by Section 201.007(c), if a request for a de novo hearing before the referring court is not timely filed, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 201.015, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the

associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 476, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 5, eff. September 1, 2007. Acts 2017, 85th Leg., R.S., Ch. 279 (H.B. 2927), Sec. 2, eff. May 29, 2017. Acts 2017, 85th Leg., R.S., Ch. 912 (S.B. 1329), Sec. 1.03(b), eff. Sept. 1, 2017.

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Alwazzan v. Alwazzan, ___ S.W.3d ___, No. 01-16-00589-CV, 2018 WL 6382061, at *12 (Tex. App.—Houston [1st Dist.] Dec. 6, 2018, no pet.). In a default divorce, when a referring court does not sign the final order, the associate judge's report cannot be considered an adjudication on the merits. If the petitioner nonsuits their claim before the referring court signs the order, the court does not have continuing, exclusive jurisdiction over any subsequent claims because no final order has been rendered.

Clark v. Clark, Nos. 01-15-00615-CV, 01-15-00729-CV, 2016 WL 3541704 (Tex. App.—Houston [1st Dist.] June 28, 2016, orig. proceeding) (mem. op.). When parties waive de novo hearing before referring court, the associate judge's order must be signed by the referring court to become a final order.

Kennedy v. Kennedy, 125 S.W.3d 14, 19–20 (Tex. App.—Austin 2002, pet. denied), *cert. denied*, 540 U.S. 1178 (2004). "The trial court also erred in adopting and approving the associate judge's order in its entirety before hearing Ms. Kennedy's de novo appeal. Although the court was required to conditionally approve the associate judge's contempt order within seventy-two hours for Ms. Kennedy to remain incarcerated, it should have limited its approval to Ms. Kennedy's incarceration pending her de novo appeal."

Attorney General of Texas v. Orr, 989 S.W.2d 464, 468 n.2 (Tex. App.—Austin 1999, no pet.). "We view the purpose of section 201.013(a) to be allowing temporary orders to be in effect pending trial before the referring court. Despite the continuing validity of the associate judge's recommendations for that limited purpose, the judgment of the referring court on the issues appealed will be based solely on the evidence presented at the de novo hearing."

Sec. 201.014. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT

(a) Except as otherwise provided in this subchapter, unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear further evidence; or

(3) recommit the matter to the associate judge for further proceedings.

(b) Regardless of whether a party files a written request for a de novo hearing before the referring court, a proposed order or judgment rendered by an associate judge in a suit filed by the Department of Family and Protective Services that meets the requirements of Section 263.401(d) is considered a final order for purposes of Section 263.401.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 9, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 6, eff. September 1, 2007. Acts 2017, 85th Leg., R.S., Ch. 279 (H.B. 2927), Sec. 3, eff. May 29, 2017. Acts 2017, 85th Leg., R.S., Ch. 912 (S.B. 1329), Sec. 1.03(c), eff. Sept. 1, 2017.

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Clark v. Clark, Nos. 01-15-00615-CV, 01-15-00729-CV, 2016 WL 3541704 (Tex. App.—Houston [1st Dist.] June 28, 2016, orig. proceeding) (mem. op.). "Although a referring court has discretion with respect to *how* it chooses to act on an associate judge's proposed order or judgment, it cannot refuse to take any action."

Sec. 201.015. DE NOVO HEARING BEFORE REFERRING COURT

(a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the third working day after the date the party receives notice of:

(1) the substance of the associate judge's report as provided by Section 201.011; or

(2) the rendering of the temporary order, if the request concerns a temporary order rendered by an associate judge under Section 201.007(a)(14)(C).

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court.

(c) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury.

(d) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney under Rule 21a, Texas Rules of Civil Procedure.

(e) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the third working day after the date the initial request was filed.

(f) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date on which the initial request for a de novo hearing was filed with the clerk of the referring court.

(g) Before the start of a hearing by an associate judge, the parties may waive the right of a de novo hearing before the referring court in writing or on the record.

(h) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion.

(i) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1302, Sec. 10, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1043 (H.B. 1995), Sec. 1, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 7, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 25, eff. June 19, 2009. Acts 2013, 83rd Leg., R.S., Ch. 916 (H.B. 1366), Sec. 5, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 589 (H.B. 4086), Sec. 1, eff. June 16, 2015.

ANNOTATIONS

In re R.A.O., 561 S.W.3d 704, 709 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Father was required to file a request for de novo hearing before the referring court within three working days from the date the associate judge signed the final order in a Title IV-D action granting the mother's petition seeking an increase in child support payments under the statute specific to Title IV-D associate judges (section 201.1042), rather than by the third day after the associate judge's earlier oral rendition of the substance of report, under the statute generally applicable to associate judges (section 201.015(a)). Subsection 201.015(a)'s deadline does not apply if that deadline differs from the deadline under section 201.1042.

In re Office of the Attorney General of Texas, No. 13-18-00474-CV, 2018 WL 5274147, at *4 (Tex. App.—Corpus Christi Oct. 23, 2018, no pet.) (mem. op.). When the OAG provides Title IV-D services, it becomes entitled to an assignment of child support rights. Because the OAG did not receive notice of a request to enter an agreed order regarding the child support arrearages, nor proper notice and service of the father's request to enter the agreed judg-

ment, the judgment resulted in a violation of due process. This rendered the agreed judgment "constitutionally infirm." The trial court abused its discretion by signing the agreed order without providing the OAG with notice and hearing, and accordingly, the agreed order was void.

In re C.O., No. 04-17-00175-CV, 2018 WL 1733178, at *3 (Tex. App.—San Antonio Apr. 11, 2018, no pet. h.) (mem. op.). "In the event a party chooses not to call witnesses or produce evidence, it follows that contrary to Father's position, a trial court may rely solely on the transcript from prior hearing."

In re R. R., 537 S.W.3d 621, 622–23 (Tex. App.—Austin 2017, no pet.). "In our review of cases relating to de novo hearings from determinations by associate judges, we have found no cases in which a referring court was permitted to refuse to allow the parties to present witnesses in the de novo hearing. . . . We agree with relator that the district court's decision to consider only the transcript from the earlier hearing was an abuse of discretion."

State ex rel. Latty v. Owens, 907 S.W.2d 484, 485 (Tex. 1995) (per curiam). "Although the district court should have held a hearing on Owens' appeal before signing an order adopting the master's report, its failure to do so did not deprive it of jurisdiction to issue the order or make the order void. A judgment is void only when it is clear that the court rendering the judgment had no jurisdiction over the parties or subject matter, no jurisdiction to render judgment, or no capacity to act as a court."

J.V. v. Texas Department of Family & Protective Services, No. 03-16-00614-CV, 2017 WL 876028, at *2 (Tex. App.—Austin Mar. 1, 2017, no pet.) (mem. op.). The statutory requirement that the referring court hold a de novo hearing is mandatory. Failure to hold a requested hearing is presumptively harmful and such error is apparent on the face of the record.

In re J.A.P., 510 S.W.3d 722, 724 (Tex. App.—San Antonio 2016, no pet.). The right to object to a referral to an associate judge under section 201.005 is separate and distinct from the right to waive a de novo hearing under section 201.015. Additionally, section 201.015(g) "explicitly provides that any waiver of the right of a de novo hearing before the referring court must occur '*before the start* of a hearing by an associate judge.'"

In re H.F., No. 02-16-00347-CV, 2016 WL 6706324, at *3 (Tex. App.—Fort Worth Nov. 14, 2016, orig. proceeding) (mem. op.). Father's de novo hearing request failed to specify the issues to be presented to the referring court, making his request insufficient; the associate judge's order became a final order by operation of law.

In re A.A.T., No. 13-16-00269-CV, 2016 WL 8188946, at *2 (Tex. App.—Corpus Christi Aug. 25, 2016, no pet.) (mem. op.) (citations omitted). "A party who timely appeals the associate judge's report is entitled to a hearing de novo before the referring court. Furthermore, judicial review by trial de novo is not a traditional appeal, but a new and independent action characterized by all the attributes of an original civil action, only to the extent of the challenged finding—that is, the effect of the appeal is to begin again only as to the issues appealed." Father's notice of appeal included a request to appeal "all findings and conclusions resulting in the termination of his parental rights," satisfying the specificity required by subsection 201.015(b).

In re L.R., 324 S.W.3d 885, 888–89 (Tex. App.—Austin 2010, orig. proceeding). "[F]ailure to comply with the 30-day requirement of section 201.015(f) does not deprive the trial court of jurisdiction. . . . Because section 201.015(f) is not a jurisdictional prerequisite to a de novo hearing, the referring court is not statutorily precluded from conducting the de novo hearing outside the thirty day window. In this case, the trial court indicated its willingness and intention to hear the matter de novo outside of this window when it set the issue for trial on August 27, more than thirty days after the notice of appeal."

In re Smith, 260 S.W.3d 568, 571 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). "Under section 201.015, after an appropriate family law case has been referred to an associate judge, the referring court—upon request—must timely conduct a de novo hearing. Because this case was brought in a Harris County juvenile district court, however, section 201.015 does not apply."

Chacon v. Chacon, 222 S.W.3d 909, 912 (Tex. App.—El Paso 2007, no pet.). "[S]ection 201.015(b) is intended to limit the appealing party's ability to raise issues he has not specifically appealed in the de novo hearing. It is not a limit on the referring court's jurisdiction."

In re E.D.L., 105 S.W.3d 679, 687 (Tex. App.—Fort Worth 2003, pet. denied). The "referring court does not lose jurisdiction if it fails to hear an appeal within thirty days after the appeal is filed. . . . Rather, the thirty-day provision affords a party a right to compel the district court to hear the case promptly."

In re E.M., 54 S.W.3d 849, 852 (Tex. App.—Corpus Christi 2001, no pet.). "[T]o be entitled to a de novo hearing on appeal of an associate judge's recommendations to the referring court, a party must timely file a written notice of appeal containing the associate judge's findings and conclusions to which the party objects."

Fountain v. Knebel, 45 S.W.3d 736, 739 (Tex. App.—Dallas 2001, no pet.). "A party who timely appeals from the report of an associate judge is entitled to a hearing de novo before the referring court. Section 201.015 of the Family Code requires the referring court to hold a hearing on the appeal within thirty days. The purpose of this section is to require the prompt resolution of appeals from an associate judge's rulings. Nonetheless, the referring court does not lose its jurisdiction if it fails to hear an appeal within thirty days after the appeal is filed. Rather, the thirty-day provision affords a party the right to compel the district court to hear the case promptly. The requirement is a deadline for the trial court, not the parties. Once a party has filed a notice of appeal, the party has completed the prerequisites necessary to be entitled to a de novo hearing."

Sec. 201.016. APPELLATE REVIEW

(a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order, a default order, or a final order described by Section 201.007(a)(16) is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 476, Sec. 3, eff. Sept. 1, 2003; Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 8, eff. September 1, 2007. Acts 2017, 85th Leg., R.S., Ch. 279 (H.B. 2927), Sec. 4, eff. May 29, 2017. Acts 2017, 85th Leg., R.S., Ch. 912 (S.B. 1329), Sec. 1.03(d), eff. Sept. 1, 2017.

ANNOTATIONS

In re N.R.C., 94 S.W.3d 799, 805 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). "We conclude that the phrase 'other relief' refers to any and all relief other than relief obtained from the referring court. Any other reading of the statute would defeat the primary purpose of the section 201.016, which is to allow litigants to appeal associate judges' rulings that they did not appeal to the referring court."

In re S.G.S., 53 S.W.3d 848, 852 (Tex. App.—Fort Worth 2001, no pet.). "Section 201.016(a) of the Texas Family Code states, however, that '[f]ailure to appeal to the referring court, by waiver or otherwise, the approval by the referring court of an associate judge's report does not deprive a party of the right to appeal to or request other relief from a court of appeals or the supreme court.' Therefore, Daniel's failure to appeal the associate judge's venue ruling to the referring court does not preclude his appeal to this court."

Sec. 201.017. IMMUNITY

An associate judge appointed under this subchapter has the judicial immunity of a district judge. All existing immunity granted an associate judge by law, express or implied, continues in full force and effect.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 201.018. VISITING ASSOCIATE JUDGE

(a) If an associate judge appointed under this subchapter is temporarily unable to perform the judge's official duties because of absence or illness, injury, or other disability, a judge of a court having jurisdiction of a suit under this title, Title 1, Chapter 45, or Title 4 may appoint a visiting associate judge to perform the duties of the associate judge during the period of the associate judge's absence or disability if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a visiting associate judge.

(b) To be eligible for appointment under this section, a person must have served as an associate judge for at least two years.

(c) Sections 201.001 through 201.017 apply to a visiting associate judge appointed under this section.

(d) This section does not apply to an associate judge appointed under Subchapter B.

Added by Acts 1999, 76th Leg., ch. 1355, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 308, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1258, Sec. 5, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 197 (S.B. 812), Sec. 3, eff. September 1, 2015.

SUBCHAPTER B. ASSOCIATE JUDGE FOR TITLE IV-D CASES

Sec. 201.101. AUTHORITY OF PRESIDING JUDGE

(a) The presiding judge of each administrative judicial region, after conferring with the judges of courts in the region having jurisdiction of Title IV-D cases, shall determine which courts require the appointment of a full-time or part-time associate judge to complete each Title IV-D case within the time specified in this subchapter.

(b) If the presiding judge of an administrative judicial region determines under Subsection (a) that the courts in the region require the appointment of an associate judge, the presiding judge shall appoint an associate judge from a list of the qualified applicants who have submitted an application to the office of court administration. Before making the appointment, the presiding judge must provide the list to the judges of the courts from which cases will be referred to the associate judge. Each judge may recommend to the presiding judge the names of one or more applicants for appointment. An associate judge appointed under this subsection serves for a term of four years from the date the associate judge is appointed and qualifies for office. The appointment of an associate judge for a term does not affect the at-will employment status of the associate judge. The presiding judge may terminate an appointment at any time.

(b–1) Before reappointing an associate judge appointed under Subsection (b), the presiding judge must notify each judge of the courts from which cases will be referred to the associate judge of the presiding judge's intent to reappoint the associate judge to another term. Each judge may submit to the presiding judge a recommendation on whether the associate judge should be reappointed.

(c) An associate judge appointed under this subchapter may be appointed to serve more than one court. Two or more judges of administrative judicial regions may jointly appoint one or more associate judges to serve the regions.

(d) Except as provided under Subsection (e), if an associate judge is appointed for a court under this subchapter, all Title IV-D cases shall be referred to the associate judge by a general order for each county issued by the judge of the court for which the associate judge is appointed, or, in the absence of

that order, by a general order issued by the presiding judge who appointed the associate judge. Referral of Title IV-D cases may not be made for individual cases or case by case.

(e) If a county has entered into a contract with the Title IV-D agency under Section 231.0011, enforcement services may be directly provided in cases identified under the contract by county personnel as provided under Section 231.0011(d), including judges and associate judges of the courts of the county.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 7, eff. Sept. 1, 2003. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 8, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1182 (S.B. 1139), Sec. 1.01, eff. September 1, 2015.

Sec. 201.102. APPLICATION OF LAW GOVERNING ASSOCIATE JUDGES

Subchapter A applies to an associate judge appointed under this subchapter, except that, to the extent of any conflict between this subchapter and Subchapter A, this subchapter prevails.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 41, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1302, Sec. 11, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1258, Sec. 8, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 44 (S.B. 271), Sec. 2, eff. September 1, 2007.

Sec. 201.1021. QUALIFICATIONS

(a) To be eligible for appointment under this subchapter, a person must be a citizen of the United States, have resided in this state for the two years preceding the date of appointment, and be:

(1) eligible for assignment under Section 74.054, Government Code, because the person is named on the list of retired and former judges maintained by the presiding judge of the administrative region under Section 74.055, Government Code; or

(2) licensed to practice law in this state and have been a practicing lawyer in this state, or a judge of a court in this state who is not otherwise eligible under Subdivision (1), for the four years preceding the date of appointment.

(b) An associate judge appointed under this subchapter shall during the term of appointment reside in the administrative judicial region, or a county adjacent to the region, in which the court to which the associate judge is appointed is located. An associate judge appointed to serve in two or more administrative judicial regions may reside anywhere in the regions.

Added by Acts 2007, 80th Leg., R.S., Ch. 44 (S.B. 271), Sec. 3, eff. September 1, 2007. Amended by: Acts 2009, 81st Leg., R.S., Ch. 760 (S.B. 742), Sec. 1, eff. June 19, 2009.

Sec. 201.103. DESIGNATION OF HOST COUNTY

(a) The presiding judges of the administrative judicial regions by majority vote shall determine the host county of an associate judge appointed under this subchapter.

(b) The host county shall provide an adequate courtroom and quarters, including furniture, necessary utilities, and telephone equipment and service, for the associate judge and other personnel assisting the associate judge.

(c) An associate judge is not required to reside in the host county.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 8, eff. Sept. 1, 2003.

Sec. 201.104. POWERS OF ASSOCIATE JUDGE

(a) On the motion of a party or the associate judge, an associate judge may refer a complex case back to the judge for final disposition after the associate judge has recommended temporary support.

(b) An associate judge may render and sign any order that is not a final order on the merits of the case.

(c) An associate judge may recommend to the referring court any order after a trial on the merits.

(d) Only the referring court may hear and render an order on a motion for postjudgment relief, including a motion for a new trial or to vacate, correct, or reform a judgment.

(e) Notwithstanding Subsection (d) and subject to Section 201.1042(g), an associate judge may hear and render an order on any matter necessary to be decided in connection with a Title IV-D service, including:

(1) a suit to modify or clarify an existing child support order;

(2) a motion to enforce a child support order or revoke a respondent's community supervision and suspension of commitment;

(3) a respondent's compliance with the conditions provided in the associate judge's report for suspension of the respondent's commitment;

(4) a motion for postjudgment relief, including a motion for a new trial or to vacate, correct, or reform a judgment, if neither party has requested a de novo hearing before the referring court;

(5) a suit affecting the parent-child relationship; and

(6) a suit for modification under Chapter 156.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 42, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 46, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1258, Sec. 8, eff. Sept. 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 806 (S.B. 1437), Sec. 1, eff. September 1, 2009. Acts 2017, 85th Leg., R.S., Ch. 699 (H.B. 2048), Sec. 1, eff. Sept. 1, 2017.

Sec. 201.1041. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT

(a) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge, other than a proposed order or judgment providing for enforcement by contempt or the immediate incarceration of a party, shall become the order or judgment of the referring court by operation of law without ratification by the referring court.

(b) An associate judge's proposed order or judgment providing for enforcement by contempt or the immediate incarceration of a party becomes an order of the referring court only if:

(1) the referring court signs an order adopting the associate judge's proposed order or judgment; and

(2) the order or judgment meets the requirements of Section 157.166.

(c) Except as provided by Subsection (b), a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court pending a de novo hearing before the referring court.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 43, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 47, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1258, Sec. 8, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 9, eff. September 1, 2007.

Sec. 201.1042. DE NOVO HEARING BEFORE REFERRING COURT

(a) Except as provided by this section, Section 201.015 applies to a request for a de novo hearing before the referring court.

(b) The party requesting a de novo hearing before the referring court shall file notice with the clerk of the referring court not later than the third working day after the date the associate judge signs the proposed order or judgment.

(c) A respondent who timely files a request for a de novo hearing on an associate judge's proposed order or judgment providing for incarceration shall be brought before the referring court not later than the first working day after the date on which the respondent files the request for a de novo hearing. The referring court shall determine whether the respondent should be released on bond or whether the respondent's appearance in court at a designated time and place can be otherwise assured.

(d) If the respondent under Subsection (c) is released on bond or other security, the referring court shall condition the bond or other security on the respondent's promise to appear in court for a de novo hearing at a designated date, time, and place, and the referring court shall give the respondent notice of the hearing in open court. No other notice to the respondent is required.

(e) If the respondent under Subsection (c) is released without posting bond or security, the court shall set a de novo hearing at a designated date, time, and place and give the respondent notice of the hearing in open court. No other notice to the respondent is required.

(f) If the referring court is not satisfied that the respondent's appearance in court can be assured and the respondent remains incarcerated, a de novo hearing shall be held as soon as practicable, but not later than the fifth day after the date the respondent's request for a de novo hearing before the referring court was filed, unless the respondent or, if represented, the respondent's attorney waives the accelerated hearing.

(g) Until a de novo hearing is held under this section and the referring court has signed an order or judgment or has ruled on a timely filed motion for new trial or a motion to vacate, correct, or reform a judgment, an associate judge may not hold a hearing on the respondent's compliance with conditions in the associate judge's proposed order or judgment for suspension of commitment or on a motion to revoke the respondent's community supervision and suspension of commitment.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 43, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 48, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1258, Sec. 9, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 10, eff. September 1, 2007. Acts 2013, 83rd Leg., R.S., Ch. 916 (H.B. 1366), Sec. 6, eff. September 1, 2013.

ANNOTATIONS

In re R.A.O., 561 S.W.3d 704, 709 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Father was required to file a request for de novo hearing before the referring court within three working days from the date the associate judge signed the final order in a Title IV-D action granting the mother's petition seeking an increase in child support payments under the statute specific to Title IV-D associate judges (section 201.1042), rather than by the third day after the associate judge's earlier oral rendition of the substance of report, under the statute generally applicable to associate

judges (section 201.015(a)). Subsection 201.015(a)'s deadline does not apply if that deadline differs from the deadline under section 201.1042.

Sec. 201.105. COMPENSATION OF ASSOCIATE JUDGE

(a) An associate judge appointed under this subchapter is entitled to a salary **in the amount equal** to ~~be determined by a majority vote of the presiding judges of the administrative judicial regions. The salary may not exceed~~ 90 percent of the **state base** salary paid to a district judge as set by the General Appropriations Act **in accordance with Section 659.012(a), Government Code.**

(b) The associate judge's salary shall be paid from county funds available for payment of officers' salaries or from funds available from the state and federal government as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 10, eff. Sept. 1, 2003. Acts 2019, 86th Leg., H.B. 2384, Sec. 1, eff. Sept. 1, 2019.

Section 37 of Acts 2019, 86th Leg., H.B. 2384 states—

"The comptroller of public accounts is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the comptroller may, but is not required to, implement a provision of this Act using other appropriations available for that purpose."

Sec. 201.106. CHILD SUPPORT COURT MONITOR AND OTHER PERSONNEL

(a) The presiding judge of an administrative judicial region or the presiding judges of the administrative judicial regions, by majority vote, may appoint other personnel, including a child support court monitor for each associate judge appointed under this subchapter, as needed to implement and administer the provisions of this subchapter.

(b) The salaries of the personnel and court monitors shall be paid from county funds available for payment of officers' salaries or from funds available from the state and federal government as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1258, Sec. 10, eff. Sept. 1, 2003.

Sec. 201.1065. DUTIES OF CHILD SUPPORT COURT MONITOR

(a) A child support court monitor appointed under this subchapter shall monitor child support cases in which the obligor is placed on probation for failure to comply with the requirements of a child support order.

(b) In monitoring a child support case, a court monitor shall:

(1) conduct an intake assessment of the needs of an obligor that, if addressed, would enable the obligor to comply with a child support order;

(2) refer an obligor to employment services offered by the employment assistance program under Section 302.0035, Labor Code, if appropriate;

(3) provide mediation services or referrals to services, if appropriate;

(4) schedule periodic contacts with an obligor to assess compliance with the child support order and whether additional support services are required;

(5) monitor the amount and timeliness of child support payments owed and paid by an obligor; and

(6) if appropriate, recommend that the court:

(A) discharge an obligor from or modify the terms of the obligor's community supervision; or

(B) revoke an obligor's community supervision.

Added by Acts 1999, 76th Leg., ch. 1072, Sec. 3, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 10, eff. Sept. 1, 2003.

Sec. 201.1066. SUPERVISION OF ASSOCIATE JUDGES

(a) The office of court administration shall assist the presiding judges in:

(1) monitoring the associate judges' compliance with job performance standards and federal and state laws and policies;

(2) addressing the training needs and resource requirements of the associate judges;

(3) conducting annual performance evaluations for the associate judges and other personnel appointed under this subchapter based on written personnel performance standards adopted by the presiding judges and performance information solicited from the referring courts and other relevant persons; and

(4) receiving, investigating, and resolving complaints about particular associate judges or the associate judge program under this subchapter based on a uniform process adopted by the presiding judges.

(b) The office of court administration shall develop procedures and a written evaluation form to be used by the presiding judges in conducting the annual performance evaluations under Subsection (a)(3).

(c) Each judge of a court that refers cases to an associate judge under this subchapter may submit to the presiding judge or the office of court administration information on the associate judge's performance during the preceding year based on a uniform process adopted by the presiding judges.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 44, eff. Sept. 1, 1999. Renumbered from Family Code Sec. 201.1065 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(31), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 10, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1182 (S.B. 1139), Sec. 1.02, eff. September 1, 2015.

Sec. 201.107. STATE AND FEDERAL FUNDS

(a) The office of court administration may contract with the Title IV-D agency for available state and federal funds under Title IV-D and may employ personnel needed to implement and administer this subchapter. An associate judge, a court monitor for each associate judge, and other personnel appointed under this subchapter are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations.

(b) The presiding judges of the administrative judicial regions, state agencies, and counties may contract with the Title IV-D agency for available federal funds under Title IV-D to reimburse costs and salaries associated with associate judges, court monitors, and personnel appointed under this subchapter and may also use available state funds and public or private grants.

(c) The presiding judges and the Title IV-D agency shall act and are authorized to take any action necessary to maximize the amount of federal funds available under the Title IV-D program.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 45, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1072, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1258, Sec. 11, eff. Sept. 1, 2003.

Sec. 201.110. TIME FOR DISPOSITION OF TITLE IV-D CASES

(a) Title IV-D cases must be completed from the time of successful service to the time of disposition within the following time:

(1) 75 percent within six months; and

(2) 90 percent within one year.

(b) Title IV-D cases shall be given priority over other cases.

(c) A clerk or judge may not restrict the number of Title IV-D cases that are filed or heard in the courts.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 12, eff. Sept. 1, 2003.

Sec. 201.111. TIME TO ACT ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT THAT INCLUDES RECOMMENDED FINDING OF CONTEMPT

(a) Not later than the 10th day after the date an associate judge's proposed order or judgment recommending a finding of contempt is signed, the referring court shall:

(1) adopt, modify, or reject the proposed order or judgment;

(2) hear further evidence; or

(3) recommit the matter for further proceedings.

(b) The time limit in Subsection (a) does not apply if a party has filed a written request for a de novo hearing before the referring court.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 80, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 46, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1258, Sec. 13, 14, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 11, eff. September 1, 2007.

Sec. 201.112. LIMITATION ON LAW PRACTICE BY CERTAIN ASSOCIATE JUDGES

A full-time associate judge appointed under this subchapter may not engage in the private practice of law.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 47, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 15, eff. Sept. 1, 2003.

Sec. 201.113. VISITING ASSOCIATE JUDGE

(a) If an associate judge appointed under this subchapter is temporarily unable to perform the associate judge's official duties because of absence resulting from family circumstances, illness, injury, dis-

ability, or military service, or if there is a vacancy in the position of associate judge, the presiding judge of the administrative judicial region in which the associate judge serves or the vacancy occurs may appoint a visiting associate judge for Title IV-D cases to perform the duties of the associate judge during the period the associate judge is unable to perform the associate judge's duties or until another associate judge is appointed to fill the vacancy.

(b) A person is not eligible for appointment under this section unless the person has served as a master or associate judge under this chapter, a district judge, or a statutory county court judge for at least two years before the date of appointment.

(c) A visiting associate judge appointed under this section is subject to each provision of this chapter that applies to an associate judge serving under a regular appointment under this subchapter. A visiting associate judge appointed under this section is entitled to compensation to be determined by a majority vote of the presiding judges of the administrative judicial regions through use of funds under this subchapter. A visiting associate judge is not considered to be a state employee for any purpose.

(d) Section 2252.901, Government Code, does not apply to the appointment of a visiting associate judge under this section.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 49, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 15, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 343 (S.B. 1147), Sec. 1, eff. June 17, 2005. Acts 2009, 81st Leg., R.S., Ch. 760 (S.B. 742), Sec. 2, eff. June 19, 2009.

SUBCHAPTER C. ASSOCIATE JUDGE FOR CHILD PROTECTION CASES

Sec. 201.201. AUTHORITY OF PRESIDING JUDGE

(a) The presiding judge of each administrative judicial region, after conferring with the judges of courts in the region having family law jurisdiction and a child protection caseload, shall determine which courts require the appointment of a full-time or part-time associate judge to complete cases under Subtitle E within the times specified under that subtitle.

(b) If the presiding judge of an administrative judicial region determines under Subsection (a) that the courts in the region require the appointment of an associate judge, the presiding judge shall appoint an associate judge from a list of the qualified applicants who have submitted an application to the office of court administration. Before making the appointment, the presiding judge must provide the list to the judges of the courts from which cases will be referred to the associate judge. Each judge may recommend to the presiding judge the names of one or more applicants for appointment. An associate judge appointed under this subsection serves for a term of four years from the date the associate judge is appointed and qualifies for office. The appointment of an associate judge for a term does not affect the at-will employment status of the associate judge. The presiding judge may terminate an appointment at any time.

(b–1) Before reappointing an associate judge appointed under Subsection (b), the presiding judge must notify each judge of the courts from which cases will be referred to the associate judge of the presiding judge's intent to reappoint the associate judge to another term. Each judge may submit to the presiding judge a recommendation on whether the associate judge should be reappointed.

(c) An associate judge appointed under this subchapter may be appointed to serve more than one court. Two or more judges of administrative judicial regions may jointly appoint one or more associate judges to serve the regions.

(d) If an associate judge is appointed for a court, all child protection cases shall be referred to the associate judge by a general order for each county issued by the judge of the court for which the associate judge is appointed or, in the absence of that order, by a general order issued by the presiding judge who appointed the associate judge.

(e) This section does not limit the jurisdiction of a court to issue orders under Subtitle E.

Added by Acts 1999, 76th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 17, eff. Sept. 1, 2003. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 377 (S.B. 283), Sec. 1, eff. June 17, 2011. Acts 2015, 84th Leg., R.S., Ch. 1182 (S.B. 1139), Sec. 1.03, eff. September 1, 2015.

Sec. 201.202. APPLICATION OF LAW GOVERNING ASSOCIATE JUDGES

Except as provided by this subchapter, Subchapter A applies to an associate judge appointed under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 44 (S.B. 271), Sec. 4, eff. September 1, 2007.

Sec. 201.2021. QUALIFICATIONS

(a) To be eligible for appointment under this subchapter, a person must be a citizen of the United States, have resided in this state for the two years preceding the date of appointment, and be:

(1) eligible for assignment under Section 74.054, Government Code, because the person is named on the list of retired and former judges maintained by the presiding judge of the administrative region under Section 74.055, Government Code; or

(2) licensed to practice law in this state and have been a practicing lawyer in this state, or a judge of a court in this state who is not otherwise eligible under Subdivision (1), for the four years preceding the date of appointment.

(b) An associate judge appointed under this subchapter shall during the term of appointment reside in the administrative judicial region, or a county adjacent to the region, in which the court to which the associate judge is appointed is located. An associate judge appointed to serve in two or more administrative judicial regions may reside anywhere in the regions.

Added by Acts 2007, 80th Leg., R.S., Ch. 44 (S.B. 271), Sec. 5, eff. September 1, 2007. Amended by: Acts 2009, 81st Leg., R.S., Ch. 760 (S.B. 742), Sec. 3, eff. June 19, 2009.

Sec. 201.203. DESIGNATION OF HOST COUNTY

(a) Subject to the approval of the commissioners court of the proposed host county, the presiding judges of the administrative judicial regions by majority vote shall determine the host county of an associate judge appointed under this subchapter.

(b) The host county shall provide an adequate courtroom and quarters, including furniture, necessary utilities, and telephone equipment and service, for the associate judge and other personnel assisting the associate judge.

(c) An associate judge is not required to reside in the host county.

Added by Acts 1999, 76th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1999.

Sec. 201.204. GENERAL POWERS OF ASSOCIATE JUDGE

(a) On the motion of a party or the associate judge, an associate judge may refer a complex case back to the referring court for final disposition after recommending temporary orders for the protection of a child.

(b) An associate judge may render and sign any pretrial order.

(c) An associate judge may recommend to the referring court any order after a trial on the merits.

(d) An associate judge may hear and render an order in a suit for the adoption of a child for whom the Texas Department of Family and Protective Services has been named managing conservator.

(e) An associate judge may hear and render an order in a suit referred to the associate judge by a juvenile court under Section 51.04, subject to the limitations placed on the associate judge's authority in the order of referral.

Added by Acts 1999, 76th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 18, eff. Sept. 1, 2003; Acts 2017, 85th Leg., R.S., Ch. 912 (S.B. 1329), Sec. 1.04, eff. Sept. 1, 2017; Acts 2019, 86th Leg., S.B. 1887, Sec. 3, eff. Sept. 1, 2019.

Section 4 of Acts 2019, 86th Leg., S.B. 1887 states—

"The changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurred before the effective date of this Act if any element of the conduct occurred before that date."

Sec. 201.2041. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT

(a) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court by operation of law without ratification by the referring court.

(b) 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) is considered a final order for purposes of Section 263.401.

Added by Acts 2003, 78th Leg., ch. 1258, Sec. 19, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 12, eff. September 1, 2007.

Sec. 201.2042. DE NOVO HEARING BEFORE REFERRING COURT

(a) Except as provided by this section, Section 201.015 applies to a request for a de novo hearing before the referring court.

(b) The party requesting a de novo hearing before the referring court shall file notice with the referring court and the clerk of the referring court.

Added by Acts 2003, 78th Leg., ch. 1258, Sec. 19, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1235 (H.B. 2501), Sec. 13, eff. September 1, 2007.

Sec. 201.205. COMPENSATION OF ASSOCIATE JUDGE

(a) An associate judge appointed under this subchapter is entitled to a salary **in the amount equal** ~~to as determined by a majority vote of the presiding judges of the administrative judicial regions. The salary may not exceed~~ 90 percent of the **state base** salary paid to a district judge as set by the ~~state~~ General Appropriations Act **in accordance with Section 659.012(a), Government Code**.

(b) The associate judge's salary shall be paid from county funds available for payment of officers' salaries subject to the approval of the commissioners court or from funds available from the state and federal governments as provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 20, eff. Sept. 1, 2003. Acts 2019, 86th Leg., H.B. 2384, Sec. 2, eff. Sept. 1, 2019.

Section 37 of Acts 2019, 86th Leg., H.B. 2384 states—

"The comptroller of public accounts is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the comptroller may, but is not required to, implement a provision of this Act using other appropriations available for that purpose."

Sec. 201.206. PERSONNEL

(a) The presiding judge of an administrative judicial region or the presiding judges of the administrative judicial regions, by majority vote, may appoint personnel as needed to implement and administer the provisions of this subchapter.

(b) The salaries of the personnel shall be paid from county funds available for payment of officers' salaries subject to the approval of the commissioners court or from funds available from the state and federal governments as provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 21, eff. Sept. 1, 2003.

Sec. 201.2061. SUPERVISION OF ASSOCIATE JUDGES

(a) The office of court administration shall assist the presiding judges in:

(1) monitoring the associate judges' compliance with any applicable job performance standards, uniform practices adopted by the presiding judges, and federal and state laws and policies;

(2) addressing the training needs and resource requirements of the associate judges;

(3) conducting annual performance evaluations for the associate judges and other personnel appointed under this subchapter based on written personnel performance standards adopted by the presiding judges and performance information solicited from the referring courts and other relevant persons; and

(4) receiving, investigating, and resolving complaints about particular associate judges or the associate judge program under this subchapter based on a uniform process adopted by the presiding judges.

(b) The office of court administration shall develop procedures and a written evaluation form to be used by the presiding judges in conducting the annual performance evaluations under Subsection (a)(3).

(c) Each judge of a court that refers cases to an associate judge under this subchapter may submit to the presiding judge or the office of court administration information on the associate judge's performance during the preceding year based on a uniform process adopted by the presiding judges.

Added by Acts 2003, 78th Leg., ch. 1258, Sec. 22, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1182 (S.B. 1139), Sec. 1.04, eff. September 1, 2015.

Sec. 201.207. STATE AND FEDERAL FUNDS; PERSONNEL

(a) The office of court administration may contract for available state and federal funds from any source and may employ personnel needed to implement and administer this subchapter. An associate judge and other personnel appointed under this subsection are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations.

(b) The presiding judges of the administrative judicial regions, state agencies, and counties may contract for available federal funds from any source to reimburse costs and salaries associated with associate judges and personnel appointed under this section and may also use available state funds and public or private grants.

(c) The presiding judges and the office of court administration in cooperation with other agencies shall take action necessary to maximize the amount of federal money available to fund the use of associate judges under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1999.

Sec. 201.208. ASSIGNMENT OF JUDGES AND APPOINTMENT OF VISITING ASSOCIATE JUDGES

(a) This chapter does not limit the authority of a presiding judge to assign a judge eligible for assignment under Chapter 74, Government Code, to assist in processing cases in a reasonable time.

(b) If an associate judge appointed under this subchapter is temporarily unable to perform the associate judge's official duties because of absence resulting from family circumstances, illness, injury, disability, or military service, or if there is a vacancy in the position of associate judge, the presiding judge of the administrative judicial region in which the associate judge serves or the vacancy occurs may appoint a visiting associate judge to perform the duties of the associate judge during the period the associate judge is unable to perform the associate judge's duties or until another associate judge is appointed to fill the vacancy.

(c) A person is not eligible for appointment under this section unless the person has served as a master or associate judge under this chapter, a district judge, or a statutory county court judge for at least two years before the date of appointment.

(d) A visiting associate judge appointed under this section is subject to each provision of this chapter that applies to an associate judge serving under a regular appointment under this subchapter. A visiting associate judge appointed under this section is entitled to compensation, to be determined by a majority vote of the presiding judges of the administrative judicial regions, through use of funds under this subchapter. A visiting associate judge is not considered to be a state employee for any purpose.

(e) Section 2252.901, Government Code, does not apply to the appointment of a visiting associate judge under this section.

Added by Acts 1999, 76th Leg., ch. 1302, Sec. 12, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 23, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 343 (S.B. 1147), Sec. 2, eff. June 17, 2005. Acts 2009, 81st Leg., R.S., Ch. 760 (S.B. 742), Sec. 4, eff. June 19, 2009.

Sec. 201.209. LIMITATION ON LAW PRACTICE BY ASSOCIATE JUDGE

An associate judge appointed under this subchapter may not engage in the private practice of law.

Added by Acts 2003, 78th Leg., ch. 1258, Sec. 24, eff. Sept. 1, 2003.

SUBCHAPTER D. ASSOCIATE JUDGE FOR JUVENILE MATTERS

Sec. 201.301. APPLICABILITY

This subchapter applies only to an associate judge appointed under this subchapter and does not apply to a juvenile court master appointed under Subchapter K, Chapter 54, Government Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.302. APPOINTMENT

(a) A judge of a court that is designated as a juvenile court may appoint a full-time or part-time associate judge to perform the duties authorized by this chapter if the commissioners court of a county in which the court has jurisdiction has authorized creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county has been designated as a juvenile court, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.303. QUALIFICATIONS

To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;

(2) have been licensed to practice law in this state for at least four years;

(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022, Government Code, and before final disposition of the proceedings.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.304. COMPENSATION

(a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.305. TERMINATION

(a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts which the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

(1) the associate judge's name and state bar identification number;

(2) each court ordering termination; and

(3) the date the associate judge's employment ends.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.306. CASES THAT MAY BE REFERRED

(a) Except as provided by this section, a judge of a juvenile court may refer to an associate judge any aspect of a juvenile matter brought:

(1) under this title or Title 3; or

(2) in connection with Rule 308a, Texas Rules of Civil Procedure.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will

hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

(d) The requirements of Subsections (b) and (c) apply when a judge has authority to refer the trial of a suit under this title, Title 1, or Title 4 to an associate judge, master, or other assistant judge regardless of whether the assistant judge is appointed under this subchapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.307. METHODS OF REFERRAL

(a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the power or duties of an associate judge.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.308. POWERS OF ASSOCIATE JUDGE

(a) Except as limited by an order of referral, an associate judge may:

(1) conduct a hearing;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue a summons for:

(A) the appearance of witnesses; and

(B) the appearance of a parent who has failed to appear before an agency authorized to conduct an investigation of an allegation of abuse or neglect of a child after receiving proper notice;

(6) examine a witness;

(7) swear a witness for a hearing;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) recommend an order to be rendered in a case;

(11) regulate proceedings in a hearing;

(12) order the attachment of a witness or party who fails to obey a subpoena;

(13) order the detention of a witness or party found guilty of contempt, pending approval by the referring court; and

(14) take action as necessary and proper for the efficient performance of the associate judge's duties.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.309. REFEREES

(a) An associate judge appointed under this subchapter may serve as a referee as provided by Sections 51.04(g) and 54.10.

(b) A referee appointed under Section 51.04(g) may be appointed to serve as an associate judge under this subchapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.310. ATTENDANCE OF BAILIFF

A bailiff may attend a hearing by an associate judge if directed by the referring court.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.311. WITNESS

(a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

(1) failed to appear before an associate judge after being summoned; or

(2) improperly refused to answer questions if the refusal has been certified to the court by the associate judge.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.312. COURT REPORTER; RECORD

(a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial or a contested final termination hearing.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record as costs.

(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 201.317.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.313. REPORT

(a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order. The associate judge's report must be in writing and in the form directed by the referring court.

(b) After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(c) Notice may be given to the parties:

(1) in open court, by an oral statement or by providing a copy of the associate judge's written report, including any proposed order;

(2) by certified mail, return receipt requested; or

(3) by facsimile.

(d) A rebuttable presumption exists that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile.

(e) After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.314. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER

(a) An associate judge shall give all parties notice of the right to a de novo hearing to the judge of the referring court.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.315. ORDER OF COURT

(a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 201.317, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.316. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT

Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.317. DE NOVO HEARING

(a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the third working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 201.313.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the third working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 916 (H.B. 1366), Sec. 7, eff. September 1, 2013.

Sec. 201.318. APPELLATE REVIEW

(a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.319. JUDICIAL IMMUNITY

An associate judge appointed under this subchapter has the judicial immunity of a district judge.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

Sec. 201.320. VISITING ASSOCIATE JUDGE

(a) If an associate judge appointed under this subchapter is temporarily unable to perform the judge's official duties because of absence or illness, injury, or other disability, a judge of a court having jurisdiction of a suit under this title or Title 1 or 4 may appoint a visiting associate judge to perform the duties of the associate judge during the period of the associate judge's absence or disability if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a visiting associate judge.

(b) To be eligible for appointment under this section, a person must have served as an associate judge for at least two years.

(c) Sections 201.001 through 201.017 apply to a visiting associate judge appointed under this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 6.03, eff. January 1, 2012.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE C. JUDICIAL RESOURCES AND SERVICES

CHAPTER 202. FRIEND OF THE COURT

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Sec. 202.001. APPOINTMENT

(a) After an order for child support or possession of or access to a child has been rendered, a court may appoint a friend of the court on:

(1) the request of a person alleging that the order has been violated; or

(2) its own motion.

(b) A court may appoint a friend of the court in a proceeding under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) only if the Title IV-D agency agrees in writing to the appointment.

(c) The duration of the appointment of a friend of the court is as determined by the court.

(d) In the appointment of a friend of the court, the court shall give preference to:

(1) a local domestic relations office;

(2) a local child support collection office;

(3) the local court official designated to enforce actions as provided in Chapter 159; or

(4) an attorney in good standing with the State Bar of Texas.

(e) In the execution of a friend of the court's duties under this subchapter, a friend of the court shall represent the court to ensure compliance with the court's order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 202.002. AUTHORITY AND DUTIES

(a) A friend of the court may coordinate nonjudicial efforts to improve compliance with a court order relating to child support or possession of or access to a child by use of:

(1) telephone communication;

(2) written communication;

(3) one or more volunteer advocates under Chapter 107;

(4) informal pretrial consultation;

(5) one or more of the alternate dispute resolution methods under Chapter 154, Civil Practice and Remedies Code;

(6) a licensed social worker;

(7) a family mediator; and

(8) employment agencies, retraining programs, and any similar resources to ensure that both parents can meet their financial obligations to the child.

(b) A friend of the court, not later than the 15th day of the month following the reporting month:

(1) shall report to the court or monitor reports made to the court on:

(A) the amount of child support collected as a percentage of the amount ordered; and

(B) efforts to ensure compliance with orders relating to possession of or access to a child; and

(2) may file an action to enforce, clarify, or modify a court order relating to child support or possession of or access to a child.

(c) A friend of the court may file a notice of delinquency and a request for a writ of income withholding under Chapter 158 in order to enforce a child support order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 81, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 702, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 892, Sec. 21, eff. Sept. 1, 2003.

Sec. 202.003. DUTY OF LOCAL OFFICES AND OFFICIALS TO REPORT

A local domestic relations office, a local registry, or a court official designated to receive child support under a court order shall, if ordered by the court, report to the court or a friend of the court on a monthly basis:

(1) any delinquency and arrearage in child support payments; and

(2) any violation of an order relating to possession of or access to a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 202.004. ACCESS TO INFORMATION

A friend of the court may arrange access to child support payment records by electronic means if the records are computerized.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 202.005. COMPENSATION

(a) A friend of the court is entitled to compensation for services rendered and for expenses incurred in rendering the services.

(b) The court may assess the amount that the friend of the court receives in compensation against a party to the suit in the same manner as the court awards costs under Chapter 106.

~~(c) A friend of the court or a person who acts as the court's custodian of child support records, including the clerk of a court, may apply for and receive funds from the child support and court management account under Section 21.007, Government Code.~~

~~(d) A friend of the court who receives funds under Subsection (c) shall use the funds to reimburse any compensation the friend of the court received under Subsection (b).~~

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2019, 86th Leg., S.B. 346, Sec. 4.40, eff. Jan. 1, 2020.

Section 5.01 of Acts 2019, 86th Leg., S.B. 346 states—

"Except as otherwise provided by this Act, the changes in law made by this Act apply only to a cost, fee, or fine on conviction for an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date."

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE C. JUDICIAL RESOURCES AND SERVICES

CHAPTER 203. DOMESTIC RELATIONS OFFICES

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Sec. 203.001. DEFINITIONS

In this chapter:

(1) "Administering entity" means a commissioners court, juvenile board, or other entity responsible for administering a domestic relations office under this chapter.

(2) "Domestic relations office" means a county office that serves families, county departments, and courts to ensure effective implementation of this title.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1995.

ANNOTATIONS

Bialaszewski v. Bialaszewski, 557 S.W.3d 88, 92 (Tex. App.—Austin 2017, no pet.). "The official-mistake doctrine applies only to the mistakes or wrongful acts of official court functionaries, such as court clerks, and employees of the DRO are not included within that category."

Sec. 203.002. ESTABLISHMENT OF DOMESTIC RELATIONS OFFICE

A commissioners court may establish a domestic relations office.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 203.003 and amended by Acts 1995, 74th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.003. ADMINISTRATION

(a) A domestic relations office shall be administered:

(1) as provided by the commissioners court; or

(2) if the commissioners court does not otherwise provide for the administration of the office, by the juvenile board that serves the county in which the domestic relations office is located.

(b) The administering entity shall appoint and assign the duties of a director who shall be responsible for the day-to-day administration of the office. A director serves at the pleasure of the administering entity.

(c) The administering entity shall determine the amount of money needed to operate the office.

(d) A commissioners court that establishes a domestic relations office under this chapter may execute a bond for the office. A bond under this subsection must be:

(1) executed with a solvent surety company authorized to do business in the state; and

(2) conditioned on the faithful performance of the duties of the office.

(e) The administering entity shall establish procedures for the acceptance and use of a grant or donation to the office.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 203.004 and amended by Acts 1995, 74th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.004. POWERS AND DUTIES

(a) A domestic relations office may:

(1) collect and disburse child support payments that are ordered by a court to be paid through a domestic relations registry;

(2) maintain records of payments and disbursements made under Subdivision (1);

(3) file a suit, including a suit to:

(A) establish paternity;

(B) enforce a court order for child support or for possession of and access to a child; and

(C) modify or clarify an existing child support order;

(4) provide an informal forum in which alternative dispute resolution is used to resolve disputes under this code;

(5) prepare a court-ordered child custody evaluation or adoption evaluation under Chapter 107;

(6) represent a child as an amicus attorney, an attorney ad litem, or a guardian ad litem in a suit in which:

(A) termination of the parent-child relationship is sought; or

(B) conservatorship of or access to a child is contested;

(7) serve as a friend of the court;

(8) provide predivorce counseling ordered by a court;

(9) provide community supervision services under Chapter 157;

(10) provide information to assist a party in understanding, complying with, or enforcing the party's duties and obligations under Subdivision (3);

(11) provide, directly or through a contract, visitation services, including supervision of court-ordered visitation, visitation exchange, or other similar services;

(12) issue an administrative writ of withholding under Subchapter F, Chapter 158; and

(13) provide parenting coordinator services under Chapter 153.

(b) A court having jurisdiction in a proceeding under this title, Title 3, or Section 25.05, Penal Code, may order that child support payments be made through a domestic relations office.

(c) A domestic relations office may:

(1) hire or contract for the services of attorneys to assist the office in providing services under this chapter; and

(2) employ community supervision officers or court monitors.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 203.005 and amended by Acts 1995, 74th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 859, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1191, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 50, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 20, eff. September 1, 2005. Acts 2005, 79th Leg., Ch. 199 (H.B. 1182),

Sec. 5, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 7, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 3.05, eff. September 1, 2015.

Sec. 203.005. FEES AND CHARGES

(a) The administering entity may authorize a domestic relations office to assess and collect:

(1) an initial operations fee not to exceed $15 to be paid to the domestic relations office on each filing of an original suit, motion for modification, or motion for enforcement;

(2) in a county that has a child support enforcement cooperative agreement with the Title IV-D agency, an initial child support service fee not to exceed $36 to be paid to the domestic relations office on the filing of an original suit;

(3) a reasonable application fee to be paid by an applicant requesting services from the office;

(4) a reasonable attorney's fee and court costs incurred or ordered by the court;

(5) a monthly service fee not to exceed $3 to be paid annually in advance by a managing conservator and possessory conservator for whom the domestic relations office provides child support services;

(6) community supervision fees as provided by Chapter 157 if community supervision officers are employed by the domestic relations office;

(7) a reasonable fee for preparation of a court-ordered child custody evaluation or adoption evaluation;

(8) in a county that provides visitation services under Sections 153.014 and 203.004 a reasonable fee to be paid to the domestic relations office at the time the visitation services are provided;

(9) a fee to reimburse the domestic relations office for a fee required to be paid under Section 158.503(d) for filing an administrative writ of withholding;

(10) a reasonable fee for parenting coordinator services; and

(11) a reasonable fee for alternative dispute resolution services.

(b) The first payment of a fee under Subsection (a)(5) is due on the date that the person required to pay support is ordered to begin child support, alimony, or separate maintenance payments. Subsequent payments of the fee are due annually and in advance.

(c) The director of a domestic relations office shall attempt to collect all fees in an efficient manner.

(d) The administering entity may provide for an exemption from the payment of a fee authorized under this section if payment of the fee is not practical or in the interest of justice. Fees that may be exempted under this subsection include fees related to:

(1) spousal and child support payments made under an interstate pact;

(2) a suit brought by the Texas Department of Human Services;

(3) activities performed by the Department of Protective and Regulatory Services or another governmental agency, a private adoption agency, or a charitable organization; and

(4) services for a person who has applied for or who receives public assistance under the laws of this state.

(e) A fee authorized by this section for providing child support services is part of the child support obligation and may be enforced against both an obligor and obligee by any method available for the enforcement of child support, including contempt.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 203.009 and amended by Acts 1995, 74th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 48, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 51, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 707, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 199 (H.B. 1182), Sec. 6, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 8, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 26, eff. June 19, 2009. Acts 2009, 81st Leg., R.S., Ch. 1035 (H.B. 4424), Sec. 2, eff. June 19, 2009. Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 10, eff. June 17, 2011. Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 3.06, eff. September 1, 2015.

Sec. 203.006. FUND

(a) As determined by the administering entity, fees collected or received by a domestic relations office shall be deposited in:

(1) the general fund for the county in which the domestic relations office is located; or

(2) the office fund established for the domestic relations office.

(b) The administering entity shall use the domestic relations office fund to provide money for services authorized by this chapter.

(c) A domestic relations office fund may be supplemented as necessary from the county's general fund or from other money available from the county.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 203.010 and amended by Acts 1995, 74th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 11, eff. Sept. 1, 1997.

Sec. 203.007. ACCESS TO RECORDS; OFFENSE

(a) A domestic relations office may obtain the records described by Subsections (b), (c), (d), and (e) that relate to a person who has:

(1) been ordered to pay child support;

(2) been designated as a conservator of a child;

(3) been designated to be the father of a child;

(4) executed an acknowledgment of paternity;

(5) court-ordered possession of a child; or

(6) filed suit to adopt a child.

(b) A domestic relations office is entitled to obtain from the Department of Public Safety records that relate to:

(1) a person's date of birth;

(2) a person's most recent address;

(3) a person's current driver's license status;

(4) motor vehicle accidents involving a person;

(5) reported traffic-law violations of which a person has been convicted; and

(6) a person's criminal history record information.

(c) A domestic relations office is entitled to obtain from the Texas Workforce Commission records that relate to:

(1) a person's address;

(2) a person's employment status and earnings;

(3) the name and address of a person's current or former employer; and

(4) unemployment compensation benefits received by a person.

(d) To the extent permitted by federal law, a domestic relations office is entitled to obtain from the national directory of new hires established under 42 U.S.C. Section 653(i), as amended, records that relate to a person described by Subsection (a), including records that relate to:

(1) the name, telephone number, and address of the person's employer;

(2) information provided by the person on a W-4 form; and

(3) information provided by the person's employer on a Title IV-D form.

(e) To the extent permitted by federal law, a domestic relations office is entitled to obtain from the state case registry records that relate to a person described by Subsection (a), including records that relate to:

(1) the street and mailing address and the social security number of the person;

(2) the name, telephone number, and address of the person's employer;

(3) the location and value of real and personal property owned by the person; and

(4) the name and address of each financial institution in which the person maintains an account and the account number for each account.

(f) An agency required to provide records under this section may charge a domestic relations office a fee for providing the records in an amount that does not exceed the amount paid for those records by the agency responsible for Title IV-D cases.

(g) The Department of Public Safety, the Texas Workforce Commission, or the office of the secretary of state may charge a domestic relations office a fee not to exceed the charge paid by the Title IV-D agency for furnishing records under this section.

(h) Information obtained by a domestic relations office under this section that is confidential under a constitution, statute, judicial decision, or rule is privileged and may be used only by that office.

(i) A person commits an offense if the person releases or discloses confidential information obtained under this section without the consent of the person to whom the information relates. An offense under this subsection is a Class C misdemeanor.

(j) A domestic relations office is entitled to obtain from the office of the secretary of state the following information about a registered voter to the extent that the information is available:

(1) complete name;

(2) current and former street and mailing address;

(3) sex;

(4) date of birth;

(5) social security number; and

(6) telephone number.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Family Code Sec. 203.012 and amended by Acts 1995, 74th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 803, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.18, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 49, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 859, Sec. 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1191, Sec. 2, eff. June 18, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 832 (H.B. 772), Sec. 9, eff. September 1, 2007.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE C. JUDICIAL RESOURCES AND SERVICES

CHAPTER 204. CHILD SUPPORT COLLECTION BY PRIVATE ENTITY

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Sec. 204.001. APPLICABILITY

This chapter applies only to a commissioners court or domestic relations office of a county that did not have the authority to contract with a private entity to receive, disburse, and record payments or restitution of child support on January 1, 1997.

Added by Acts 1997, 75th Leg., ch. 1053, Sec. 1, eff. Sept. 1, 1997. Redesignated from Human Resources Code Sec. 153.001 and amended by Acts 1999, 76th Leg., ch. 118, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 740 (H.B. 2668), Sec. 3, eff. June 17, 2005.

Sec. 204.002. AUTHORITY TO CONTRACT

A county, acting through its commissioners court or domestic relations office, may contract with a private entity to:

(1) enforce, collect, receive, and disburse:

(A) child support payments;

(B) other amounts due under a court order containing an order to pay child support; and

(C) fees, including fees provided by this chapter;

(2) maintain appropriate records, including records of child support and other amounts and fees that are due, past due, paid, or delinquent;

(3) locate absent parents;

(4) furnish statements to parents accounting for payments that are due, past due, paid, or delinquent;

(5) send billings and other appropriate notices to parents;

(6) perform any duty or function that a local registry is authorized to perform;

(7) perform any duty or function in connection with the state case registry; or

(8) provide another child support or visitation enforcement service authorized by the commissioners court, including mediation of disputes related to child support or visitation.

Added by Acts 1997, 75th Leg., ch. 1053, Sec. 1, eff. Sept. 1, 1997. Redesignated from Human Resources Code Sec. 153.002 and amended by Acts 1999, 76th Leg., ch. 118, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.003. TERMS AND CONDITIONS OF CONTRACT

The commissioners court or domestic relations office shall include all appropriate terms and conditions in the contract that it determines are reasonable to secure the services of a private entity as provided by this chapter, including:

(1) provisions specifying the services to be provided by the entity;

(2) the method, conditions, and amount of compensation for the entity;

(3) provisions for the security of funds collected as child support, fees, or other amounts under the contract or that otherwise provide reasonable assurance to the county of the entity's full and faithful performance of the contract;

(4) provisions specifying the records to be kept by the entity, including any records necessary to fully account for all funds received and disbursed as child support, fees, or other amounts;

(5) requirements governing the inspection, verification, audit, or explanation of the entity's accounting or other records;

(6) the county's right to terminate the contract on 30 days' notice to the private entity if the private entity engages in an ongoing pattern of child support enforcement that constitutes wilful and gross misconduct subjecting delinquent obligors to unconscionable duress, abuse, or harassment;

(7) provisions permitting an obligor and obligee to jointly waive the monitoring procedure, if not required by law, by written request approved by order of the court having jurisdiction of the suit in which the child support order was issued; and

(8) provisions for the disclosure or nondisclosure of information or records maintained or known to the entity as a result of contract performance, including a requirement for the private entity to:

(A) disclose to any child support obligor that the private entity is attempting to enforce the obligor's child support obligation; and

(B) make no disclosure of the information or records other than in furtherance of the effort to enforce the child support order.

Added by Acts 1997, 75th Leg., ch. 1053, Sec. 1, eff. Sept. 1, 1997. Redesignated from Human Resources Code Sec. 153.003 and amended by Acts 1999, 76th Leg., ch. 118, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.004. FUNDING

(a) To provide or recover the costs of providing services authorized by this chapter, a commissioners court, on its behalf or on behalf of the domestic relations office, may:

(1) provide by order for the assessment and collection of a reasonable fee at the time a party files a suit affecting the parent-child relationship;

(2) provide by order for the assessment and collection of a fee of $3 per month at a time specified for payment of child support;

(3) provide by order for the assessment and collection of a late payment fee of $4 per month to be imposed if an obligor does not make a payment of child support in full when due;

(4) accept or receive funds from public grants or private sources available for providing services authorized by this chapter; or

(5) use any combination of funding sources specified by this subsection.

(b) The commissioners court, on its behalf or on behalf of the domestic relations office, may:

(1) provide by order for reasonable exemptions from the collection of fees authorized by Subsection (a); and

(2) require payment of a fee authorized by Subsection (a)(2) annually and in advance.

(c) The commissioners court may not charge a fee under Subsection (a)(2) if the amount of child support ordered to be paid is less than the equivalent of $100 per month.

(d) The fees established under Subsection (a) may be collected by any means provided for the collection of child support. The commissioners court may provide by order, on its behalf or on behalf of the domestic relations office, for the manner of collection of fees and the apportionment of payments received to meet fee obligations.

Added by Acts 1997, 75th Leg., ch. 1053, Sec. 1, eff. Sept. 1, 1997. Redesignated from Human Resources Code Sec. 153.004 and amended by Acts 1999, 76th Leg., ch. 118, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.005. CUMULATIVE EFFECT OF CHAPTER

A power or duty conferred on a county, county official, or county instrumentality by this chapter is cumulative of the powers and duties created or conferred by other law.

Added by Acts 1997, 75th Leg., ch. 1053, Sec. 1, eff. Sept. 1, 1997. Redesignated from Human Resources Code Sec. 153.005 and amended by Acts 1999, 76th Leg., ch. 118, Sec. 1, eff. Sept. 1, 1999.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE D. ADMINISTRATIVE SERVICES

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SUBCHAPTER A. ADMINISTRATION OF TITLE IV-D PROGRAM

Sec. 231.001. DESIGNATION OF TITLE IV-D AGENCY

The office of the attorney general is designated as the state's Title IV-D agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re C.Y.K.S., 549 S.W.3d 588 (Tex. 2018). The attorney general's office had standing to appeal the assessment of appellate costs for a party for whom the office had provided services under Title IV-D. Those services include paternity determination and establishment, review, adjustment, and enforcement of child support orders.

Sec. 231.0011. DEVELOPMENT OF STATEWIDE INTEGRATED SYSTEM FOR CHILD SUPPORT, MEDICAL SUPPORT, AND DENTAL SUPPORT ENFORCEMENT

(a) The Title IV-D agency shall have final approval authority on any contract or proposal for delivery of Title IV-D services under this section and in coordination with the Texas Judicial Council, the Office of Court Administration of the Texas Judicial System, the federal Office of Child Support Enforcement, and state, county, and local officials, shall develop and implement a statewide integrated system for child support, medical support, and dental support enforcement, employing federal, state, local, and private resources to:

(1) unify child support registry functions;

(2) record and track all child support orders entered in the state;

(3) establish an automated enforcement process which will use delinquency monitoring, billing, and other enforcement techniques to ensure the payment of current support;

(4) incorporate existing enforcement resources into the system to obtain maximum benefit from state and federal funding; and

(5) ensure accountability for all participants in the process, including state, county, and local officials, private contractors, and the judiciary.

(b) Counties and other providers of child support services shall be required, as a condition of participation in the unified system, to enter into a contract with the Title IV-D agency, to comply with all federal requirements for the Title IV-D program, and to maintain at least the current level of funding for activities which are proposed to be included in the integrated child support system.

(c) The Title IV-D agency may contract with any county meeting technical system requirements necessary to comply with federal law for provision of Title IV-D services in that county. All new cases in which support orders are entered in such county after the effective date of a monitoring contract shall be Title IV-D cases. Any other case in the county, subject to federal requirements and the agreement of the county and the Title IV-D agency, may be included as a Title IV-D case. Any obligee under a support order may refuse Title IV-D enforcement services unless required to accept such services pursuant to other law.

(d) Counties participating in the unified enforcement system shall monitor all child support registry cases and on delinquency may, subject to the approval of the Title IV-D agency, provide enforcement services through:

(1) direct provision of services by county personnel;

(2) subcontracting all or portions of the services to private entities or attorneys; or

(3) such other methods as may be approved by the Title IV-D agency.

(e) The Title IV-D agency may phase in the integrated child support registry and enforcement system, and the requirement to implement the system shall be contingent on the receipt of locally generated funds and federal reimbursement. Locally generated funds include but are not limited to funds contributed by counties and cities.

(f) The Title IV-D agency shall adopt rules to implement this section.

(g) Participation in the statewide integrated system for child support, medical support, and dental support enforcement by a county is voluntary, and nothing in this section shall be construed to mandate participation.

(h) This section does not limit the ability of the Title IV-D agency to enter into an agreement with a county for the provision of services as authorized under Section 231.002.

Added by Acts 1995, 74th Leg., ch. 341, Sec. 1.01, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 50, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 40, eff. September 1, 2018. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 41, eff. September 1, 2018.

Sec. 231.0012. CHILD SUPPORT ENFORCEMENT MANAGEMENT

The person appointed by the attorney general as the person responsible for managing the Title IV-D agency's child support enforcement duties shall report directly to the attorney general.

Added by Acts 1997, 75th Leg., ch. 420, Sec. 16, eff. Sept. 1, 1997.

Sec. 231.0013. DEDICATION OF FUNDS

Appropriations made to the Title IV-D agency for child support enforcement may be expended only for the purposes for which the money was appropriated.

Added by Acts 1997, 75th Leg., ch. 420, Sec. 16, eff. Sept. 1, 1997.

Sec. 231.002. POWERS AND DUTIES

(a) The Title IV-D agency may:

(1) accept, transfer, and expend funds, subject to the General Appropriations Act, made available by the federal or state government or by another public or private source for the purpose of carrying out this chapter;

(2) adopt rules for the provision of child support services;

(3) initiate legal actions needed to implement this chapter; and

(4) enter into contracts or agreements necessary to administer this chapter.

(b) The Title IV-D agency may perform the duties and functions necessary for locating children under agreements with the federal government as provided by 42 U.S.C. Section 663.

(c) The Title IV-D agency may enter into agreements or contracts with federal, state, or other public or private agencies or individuals for the purpose of carrying out the agency's responsibilities under federal or state law. The agreements or contracts between the agency and other state agencies or political subdivisions of this or another state, including a consortia of multiple states, and agreements or contracts

with vendors for the delivery of program services are not subject to Chapter 771 or 783, Government Code.

(d) Consistent with federal law and any international treaty or convention to which the United States is a party and that has been ratified by the United States Congress, the Title IV-D agency may:

(1) on approval by and in cooperation with the governor, pursue negotiations and enter into reciprocal arrangements with the federal government, another state, or a foreign country or a political subdivision of the federal government, state, or foreign country to:

(A) establish and enforce child support obligations; and

(B) establish mechanisms to enforce an order providing for possession of or access to a child rendered under Chapter 153;

(2) spend money appropriated to the agency for child support enforcement to engage in international child support enforcement; and

(3) spend other money appropriated to the agency necessary for the agency to conduct the agency's activities under Subdivision (1).

(e) The Title IV-D agency may take the following administrative actions with respect to the location of a parent, the determination of parentage, and the establishment, modification, and enforcement of child support, medical support, and dental support orders required by 42 U.S.C. Section 666(c), without obtaining an order from any other judicial or administrative tribunal:

(1) issue an administrative subpoena, as provided by Section 231.303, to obtain financial or other information;

(2) order genetic testing for parentage determination, as provided by Chapter 233;

(3) order income withholding, as provided by Chapter 233, and issue an administrative writ of withholding, as provided by Chapter 158; and

(4) take any action with respect to execution, collection, and release of a judgment or lien for child support necessary to satisfy the judgment or lien, as provided by Chapter 157.

(f) The Title IV-D agency shall recognize and enforce the authority of the Title IV-D agency of another state to take actions similar to the actions listed in this section.

(g) The Title IV-D agency shall develop and use procedures for the administrative enforcement of interstate cases meeting the requirements of 42 U.S.C. Section 666(a)(14) under which the agency:

(1) shall promptly respond to a request made by another state for assistance in a Title IV-D case; and

(2) may, by electronic or other means, transmit to another state a request for assistance in a Title IV-D case.

(h) Repealed by Acts 2009, 81st Leg., R.S., Ch. 164, Sec. 3, eff. May 26, 2009.

(i) The Title IV-D agency may provide a release or satisfaction of a judgment for all or part of the amount of the arrearages assigned to the Title IV-D agency under Section 231.104(a).

(j) In the enforcement or modification of a child support order, the Title IV-D agency is not:

(1) subject to a mediation or arbitration clause or requirement in the order to which the Title IV-D agency was not a party; or

(2) liable for any costs associated with mediation or arbitration arising from provisions in the order or another agreement of the parties.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 874, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 68, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.27, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, Sec. 51, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 310, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 610, Sec. 12, eff. Sept. 1, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 164 (S.B. 1661), Sec. 3, eff. May 26, 2009. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 9, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 42, eff. September 1, 2018.

Sec. 231.003. FORMS AND PROCEDURES

The Title IV-D agency shall by rule promulgate any forms and procedures necessary to comply fully with the intent of this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.005. BIENNIAL REPORT REQUIRED

(a) The Title IV-D agency shall report to the legislature each biennium on:

(1) the effectiveness of the agency's child support enforcement activity in reducing the state's public assistance obligations; and

(2) the use and effectiveness of all enforcement tools authorized by state or federal law or otherwise available to the agency.

(b) The agency shall develop a method for estimating the costs and benefits of the child support enforcement program and the effect of the program on appropriations for public assistance.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 51, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 2, eff. June 17, 2011.

Sec. 231.006. INELIGIBILITY TO RECEIVE STATE GRANTS OR LOANS OR RECEIVE PAYMENT ON STATE CONTRACTS

(a) A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to:

(1) receive payments from state funds under a contract to provide property, materials, or services; or

(2) receive a state-funded grant or loan.

(a–1) Repealed by Acts 2007, 80th Leg., R.S., Ch. 972, Sec. 65(1), eff. September 1, 2007.

(b) A child support obligor or business entity ineligible to receive payments under Subsection (a) remains ineligible until:

(1) all arrearages have been paid;

(2) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or

(3) the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) as part of a court-supervised effort to improve earnings and child support payments.

(c) A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.

(d) A contract, bid, or application subject to the requirements of this section must include the following statement:

"Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

(e) If a state agency determines that an individual or business entity holding a state contract is ineligible to receive payment under Subsection (a), the contract may be terminated.

(f) If the certificate required under Subsection (d) is shown to be false, the vendor is liable to the state for attorney's fees, the costs necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or contract.

(g) This section does not create a cause of action to contest a bid or award of a state grant, loan, or contract. This section does not impose a duty on the Title IV-D agency to collect information to send to the comptroller to withhold a payment to a business entity. The Title IV-D agency and other affected agencies are encouraged to develop a system by which the Title IV-D agency may identify a business entity that is ineligible to receive a state payment under Subsection (a) and to ensure that a state payment to the entity is not made. This system should be implemented using existing funds and only if the Title IV-D agency, comptroller, and other affected agencies determine that it will be cost-effective.

(h) This section does not apply to a contract between governmental entities.

(i) The Title IV-D agency may adopt rules or prescribe forms to implement any provision of this section.

(j) A state agency may accept a bid that does not include the information required under Subsection (c) if the state agency collects the information before the contract, grant, or loan is executed.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 82, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 28, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 437, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1015, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 45, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 65(1), eff. September 1, 2007.

Sec. 231.007. DEBTS TO STATE

(a) A person obligated to pay child support in a case in which the Title IV-D agency is providing services under this chapter who does not pay the required support is indebted to the state for the purposes of Section 403.055, Government Code, if the Title IV-D agency has reported the person to the comptroller under that section properly.

(b) The amount of a person's indebtedness to the state under Subsection (a) is equal to the sum of:

(1) the amount of the required child support that has not been paid; and

(2) any interest, fees, court costs, or other amounts owed by the person because the person has not paid the support.

(c) The Title IV-D agency is the sole assignee of all payments, including payments of compensation, by the state to a person indebted to the state under Subsection (a).

(d) On request of the Title IV-D agency:

(1) the comptroller shall make payable and deliver to the agency any payments for which the agency is the assignee under Subsection (c), if the comptroller is responsible for issuing warrants or initiating electronic funds transfers to make those payments; and

(2) a state agency shall make payable and deliver to the Title IV-D agency any payments for which the Title IV-D agency is the assignee under Subsection (c) if the comptroller is not responsible for issuing warrants or initiating electronic funds transfers to make those payments.

(e) A person indebted to the state under Subsection (a) may eliminate the debt by:

(1) paying the entire amount of the debt; or

(2) resolving the debt in a manner acceptable to the Title IV-D agency.

(f) The comptroller or a state agency may rely on a representation by the Title IV-D agency that:

(1) a person is indebted to the state under Subsection (a); or

(2) a person who was indebted to the state under Subsection (a) has eliminated the debt.

(g) Except as provided by Subsection (h), the payment of workers' compensation benefits to a person indebted to the state under Subsection (a) is the same for the purposes of this section as any other payment made to the person by the state. Notwithstanding Section 408.203, Labor Code, an order or writ to withhold income from workers' compensation benefits is not required before the benefits are withheld or assigned under this section.

(h) The amount of weekly workers' compensation benefits that may be withheld or assigned under this section may not exceed 50 percent of the person's weekly compensation benefits. The comptroller or a state agency may rely on a representation by the Title IV-D agency that a withholding or assignment under this section would not violate this subsection.

(i) Section 403.055(d), Government Code, does not authorize the comptroller to issue a warrant or initiate an electronic funds transfer to pay the compensation or remuneration of an individual who is indebted to the state under Subsection (a).

(j) Section 2107.008(h), Government Code, does not authorize a state agency to pay the compensation or remuneration of an individual who is indebted to the state under Subsection (a).

(k) In this section, "compensation," "state agency," and "state officer or employee" have the meanings assigned by Section 403.055, Government Code.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 83, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.19, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 1.07, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1158, Sec. 6, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 13, eff. Sept. 1, 2003.

Sec. 231.008. DISPOSITION OF FUNDS

(a) The Title IV-D agency shall deposit money received under assignments or as fees in a special fund in the state treasury. The agency may spend money in the fund for the administration of this chapter, subject to the General Appropriations Act.

(b) All other money received under this chapter shall be deposited in a special fund in the state treasury.

(c) Sections 403.094 and 403.095, Government Code, do not apply to a fund described by this section.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.009. Payment of Penalties

From funds appropriated for the Title IV-D agency, the agency shall reimburse the Texas Department of Human Services for any penalty assessed under Title IV-A of the federal Social Security Act (42 U.S.C. Section 651 et seq.) that is assessed because of the agency's administration of this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.010. Cooperation with Department of Protective and Regulatory Services

(a) In this section, "department" means the Department of Protective and Regulatory Services.

(b) To the extent possible, the Title IV-D agency shall:

(1) provide to the department access to all of the Title IV-D agency's available child support locating resources;

(2) allow the department to use the Title IV-D agency's child support enforcement system to track child support payments and to have access to the agency's management reports that show payments made;

(3) make reports on Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), foster care collections available to the department in a timely manner; and

(4) work with the department to obtain child support payments for protective services cases in which the department is responsible for providing care for children under temporary and final orders.

Added by Acts 1999, 76th Leg., ch. 228, Sec. 1, eff. Sept. 1, 1999. Renumbered from Family Code Sec. 231.011 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(53), eff. Sept. 1, 2003.

Sec. 231.012. Child Support Work Group

(a) The director of the Title IV-D agency may convene a work group representing public and private entities with an interest in child support enforcement in this state to work with the director in developing strategies to improve child support enforcement in this state.

(b) The director of the Title IV-D agency shall appoint the members of the work group after consulting with appropriate public and private entities.

(c) The work group shall meet as convened by the director of the Title IV-D agency and consult with the director on matters relating to child support enforcement in this state, including the delivery of Title IV-D services.

(d) A work group member or the member's designee may not receive compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(e) The work group is not an advisory committee as defined by Section 2110.001, Government Code. Chapter 2110, Government Code, does not apply to the work group.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 51, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1258, Sec. 25, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 46, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 47, eff. September 1, 2007.

Sec. 231.014. PERSONNEL

The director of the Title IV-D agency shall provide to the employees of the Title IV-D agency, as often as necessary, information regarding the requirements for employment under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 51, eff. Sept. 1, 1999.

Sec. 231.015. INSURANCE REPORTING PROGRAM

(a) In consultation with the Texas Department of Insurance and representatives of the insurance industry in this state, including insurance trade associations, the Title IV-D agency by rule shall operate a program under which insurers shall cooperate with the Title IV-D agency in identifying obligors who owe child support arrearages and are subject to liens for child support arrearages to intercept certain insurance settlements or awards for claims in satisfaction of the arrearage amounts.

(b) An insurer that provides information or responds to a notice of child support lien or levy under Subchapter G, Chapter 157, or acts in good faith to comply with procedures established by the Title IV-D agency under this section is not liable for those acts under any law to any person.

(c) An insurer may not be required to report or identify the following types of claims:

(1) a first-party property damage claim under:

(A) a personal automobile insurance policy for actual repair, replacement, or loss of use of an insured vehicle; or

(B) a residential or tenant property insurance policy for actual repair, replacement, or loss of use of an insured dwelling and contents, including additional living expenses actually incurred;

(2) a third-party property damage claim:

(A) that will be paid to a vendor or repair facility for the actual repair, replacement, or loss of use of:

(i) a dwelling, condominium, or other improvements on real property;

(ii) a vehicle, including a motor vehicle, motorcycle, or recreational vehicle; or

(iii) other tangible personal property that has sustained actual damage or loss; or

(B) for the reimbursement to a claimant for payments made by the claimant to a vendor or repair facility for the actual repair, replacement, or loss of use of:

(i) a dwelling, condominium, or other improvements on real property;

(ii) a vehicle, including a motor vehicle, motorcycle, or recreational vehicle; or

(iii) other tangible personal property that has sustained actual damage or loss;

(3) a claim for benefits, or a portion of a claim for benefits, assigned to be paid to a funeral service provider or facility for actual funeral expenses owed by the insured that are not otherwise paid or reimbursed;

(4) a claim for benefits assigned to be paid to a health care provider or facility for actual medical expenses owed by the insured that are not otherwise paid or reimbursed; or

(5) a claim for benefits to be paid under a limited benefit insurance policy that provides:

(A) coverage for one or more specified diseases or illnesses;

(B) dental or vision benefits; or

(C) hospital indemnity or other fixed indemnity coverage.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 52, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 27, eff. June 19, 2009. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 12, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1185 (S.B. 1174), Sec. 1, eff. June 19, 2015. Acts 2017, 85th Leg., R.S., Ch. 902 (H.B. 3845), Sec. 1, eff. June 15, 2017.

SUBCHAPTER B. SERVICES PROVIDED BY TITLE IV-D PROGRAM

Sec. 231.101. TITLE IV-D CHILD SUPPORT SERVICES

(a) The Title IV-D agency may provide all services required or authorized to be provided by Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.), including:

(1) parent locator services;

(2) paternity determination;

(3) child support, medical support, and dental support establishment;

(4) review and adjustment of child support orders;

(5) enforcement of child support, medical support, and dental support orders; and

(6) collection and distribution of child support payments.

(b) At the request of either the obligee or obligor, the Title IV-D agency shall review a child support order once every three years and, if appropriate, adjust the support amount to meet the requirements of the child support guidelines under Chapter 154.

(c) Except as notice is included in the child support order, a party subject to a support order shall be provided notice not less than once every three years of the party's right to request that the Title IV-D agency review and, if appropriate, adjust the amount of ordered support.

(d) The Title IV-D agency may review a support order at any time on a showing of a material and substantial change in circumstances, taking into consideration the best interests of the child. If the Title IV-D agency determines that the primary care and possession of the child has changed, the Title IV-D agency may file a petition for modification under Chapter 156.

(e) The Title IV-D agency shall distribute a child support payment received by the agency from an employer within two working days after the date the agency receives the payment.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 702, Sec. 13, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 69, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(22), eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 963 (S.B. 1727), Sec. 2, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 43, eff. September 1, 2018.

ANNOTATIONS

Office of Attorney General of Texas v. C.W.H., 531 S.W.3d 178 (Tex. 2017). The attorney general's office had legal authority to seek to establish or modify conservatorship to reflect that father was no longer the custodial parent and that mother had become parent with whom children were living; that determination related to the attorney general's office's effort to modify parents' child support obligation, which constituted a service authorized by Social Security Act's child-support-enforcement program.

Sec. 231.102. ELIGIBILITY FOR CHILD SUPPORT SERVICES

The Title IV-D agency on application or as otherwise authorized by law may provide services for the benefit of a child without regard to whether the child has received public assistance.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.103. APPLICATION AND SERVICE FEES

(a) The Title IV-D agency may:

(1) charge a reasonable application fee;

(2) charge a **$35** ~~$25~~ annual service fee; and

(3) to the extent permitted by federal law, recover costs for the services provided in a Title IV-D case.

(b) An application fee may not be charged in a case in which the Title IV-D agency provides services because the family receives public assistance.

(c) An application fee may not exceed a maximum amount established by federal law.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 972, Sec. 65(3), eff. September 1, 2007.

(e) The Title IV-D agency may impose and collect a fee as authorized by federal law for each request for parent locator services under Section 231.101(a).

(f) The state disbursement unit established and operated by the Title IV-D agency under Chapter 234 may collect a monthly service fee of $3 in each case in which support payments are processed through the unit.

(g) The Title IV-D agency by rule shall establish procedures for the imposition of fees and recovery of costs authorized under this section.

(g–1) A fee authorized under this section for providing child support enforcement services is part of the child support obligation if the obligor is responsible for the fee, and may be enforced against the obligor through any method available for the enforcement of child support, including contempt.

(h) The attorney general child support application and service fee account is an account in the general revenue fund in the state treasury. The account consists of all fees and costs collected under this section. The Title IV-D agency may only use the money in the account for agency program expenditures.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1262, Sec. 2, 3, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 48, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 65(3), eff. September 1, 2007. Acts 2019, 86th Leg., S.B. 891, Sec. 13.01, eff. Sept. 1, 2019.

Section 15.05 of Acts 2019, 86th Leg., S.B. 891 states—

"The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, implement a provision of this Act using other appropriations available for that purpose."

Sec. 231.104. ASSIGNMENT OF RIGHT TO SUPPORT

(a) To the extent authorized by federal law, the approval of an application for or the receipt of financial assistance as provided by Chapter 31, Human Resources Code, constitutes an assignment to the Title IV-D agency of any rights to support from any other person that the applicant or recipient may have personally or for a child for whom the applicant or recipient is claiming assistance.

(b) An application for child support services is an assignment of support rights to enable the Title IV-D agency to establish and enforce child support, medical support, and dental support obligations, but an assignment is not a condition of eligibility for services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 70, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 53, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 14, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 44, eff. September 1, 2018.

Sec. 231.105. NOTICE OF CHANGE OF PAYEE

(a) Child support payments for the benefit of a child whose support rights have been assigned to the Title IV-D agency under Section 231.104 shall be made payable to the Title IV-D agency and transmitted to the state disbursement unit as provided by Chapter 234.

(b) If a court has ordered support payments to be made to an applicant for or recipient of financial assistance or to an applicant for or recipient of Title IV-D services, the Title IV-D agency shall, on providing notice to the obligee and the obligor, direct the obligor or other payor to make support payments payable to the Title IV-D agency and to transmit the payments to the state disbursement unit. The Title IV-D agency shall file a copy of the notice with the court ordering the payments and with the child support registry. The notice must include:

(1) a statement that the child is an applicant for or recipient of financial assistance, or a child other than a recipient child for whom Title IV-D services are provided;

(2) the name of the child and the caretaker for whom support has been ordered by the court;

(3) the style and cause number of the case in which support was ordered; and

(4) instructions for the payment of ordered support to the agency.

(c) On receipt of a copy of the notice under Subsection (b), the clerk of the court shall file the notice in the appropriate case file.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 71, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 54, eff. Sept. 1, 2001.

Sec. 231.106. NOTICE OF TERMINATION OF ASSIGNMENT

(a) On termination of support rights to the Title IV-D agency, the Title IV-D agency shall, after providing notice to the obligee and the obligor, send a notice of termination of assignment to the obligor or other payor, which may direct that all or a portion of the payments be made payable to the agency and to other persons who are entitled to receive the payments.

(b) The Title IV-D agency shall send a copy of the notice of termination of assignment to the court ordering the support and to the child support registry, and on receipt of the notice the clerk of the court shall file the notice in the appropriate case file. The clerk may not require an order of the court to terminate the assignment and direct support payments to the person entitled to receive the payment.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 72, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 52, eff. Sept. 1, 1999.

Sec. 231.107. CERTIFICATE OF ASSIGNMENT OR OF TERMINATION OF ASSIGNMENT

If an abstract of judgment or a child support lien on support amounts assigned to the Title IV-D agency under this chapter has previously been filed of record, the agency shall file for recordation, with the county clerk of each county in which such abstract or lien has been filed, a certificate that a notice of change of payee or a notice of termination of assignment has been issued by the agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 73, eff. Sept. 1, 1997.

Sec. 231.108. CONFIDENTIALITY OF RECORDS AND PRIVILEGED COMMUNICATIONS

(a) Except as provided by Subsection (c), all files and records of services provided by the Title IV-D agency under this title, including information concerning a custodial parent, a noncustodial parent, a child, or an alleged or presumed father, are confidential.

(b) Except as provided by Subsection (c), all communications made by a recipient of financial assistance under Chapter 31, Human Resources Code, or an applicant for or recipient of services under this chapter are privileged.

(c) The Title IV-D agency may use or release information from the files and records, including information that results from a communication made by a recipient of financial assistance under Chapter 31, Human Resources Code, or by an applicant for or recipient of services under this chapter, for purposes directly connected with the administration of the child support, paternity determination, parent locator, or aid to families with dependent children programs. The Title IV-D agency may release information from the files and records to a consumer reporting agency in accordance with Section 231.114.

(d) The Title IV-D agency by rule may provide for the release of information to public officials.

(e) The Title IV-D agency may not release information on the physical location of a person if:

(1) a protective order has been entered with respect to the person; or

(2) there is reason to believe that the release of information may result in physical or emotional harm to the person.

(f) The Title IV-D agency, by rule, may provide for the release of information to persons for purposes not prohibited by federal law.

(g) The final order in a suit adjudicating parentage is available for public inspection as provided by Section 160.633.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 1.08, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 911, Sec. 74, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 53, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 610, Sec. 15, eff. Sept. 1, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 963 (S.B. 1727), Sec. 3, eff. September 1, 2015.

ANNOTATIONS

In re Office of Attorney General of Texas, No. 05-18-00086-CV, 2018 WL 1725069, at *5 (Tex. App.—Dallas Apr. 10, 2018, no pet.) (mem. op.). "We conclude that providing Father's address and telephone number to the trial court in camera is not a 'release' of information prohibited by section 231.108(e)."

Sec. 231.109. ATTORNEYS REPRESENTING STATE

(a) Attorneys employed by the Title IV-D agency may represent this state or another state in an action brought under the authority of federal law or this chapter.

(b) The Title IV-D agency may contract with private attorneys, other private entities, or political subdivisions of the state to provide services in Title IV-D cases.

(c) The Title IV-D agency shall provide copies of all contracts entered into under this section to the Legislative Budget Board and the Governor's Office of Budget and Planning, along with a written justification of the need for each contract, within 60 days after the execution of the contract.

(d) An attorney employed to provide Title IV-D services represents the interest of the state and not the interest of any other party. The provision of services by an attorney under this chapter does not create an attorney-client relationship between the attorney and any other party. The agency shall, at the time an application for child support services is made, inform the applicant that neither the Title IV-D agency nor any attorney who provides services under this chapter is the applicant's attorney and that the attorney providing services under this chapter does not provide legal representation to the applicant.

(e) An attorney employed by the Title IV-D agency or as otherwise provided by this chapter may not be appointed or act as an amicus attorney or attorney ad litem for a child or another party.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 1.02, eff. Sept. 1, 1995. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 21, eff. September 1, 2005.

Sec. 231.110. AUTHORIZATION OF SERVICE

The provision of services by the Title IV-D agency under this chapter or Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) does not authorize service on the agency of any legal notice that is required to be served on any party other than the agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.111. DISQUALIFICATION OF AGENCY

A court shall not disqualify the Title IV-D agency in a legal action filed under this chapter or Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) on the basis that the agency has previously provided services to a party whose interests may now be adverse to the relief requested.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.112. INFORMATION ON PATERNITY ESTABLISHMENT

On notification by the state registrar under Section 192.005(d), Health and Safety Code, that the items relating to the child's father are not completed on a birth certificate filed with the state registrar, the Title IV-D agency may provide to:

(1) the child's mother and, if possible, the man claiming to be the child's biological father written information necessary for the man to complete an acknowledgment of paternity as provided by Chapter 160; and

(2) the child's mother written information:

(A) explaining the benefits of having the child's paternity established; and

(B) regarding the availability of paternity establishment and child support enforcement services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 54, eff. Sept. 1, 1999.

Sec. 231.113. ENFORCEMENT OF SUPPORT OBLIGATIONS IN PUBLIC ASSISTANCE CASES

To the extent possible, the Title IV-D agency shall enforce a child support obligation in a case involving a child who receives financial assistance under Chapter 31, Human Resources Code, not later than the first anniversary of the date the agency receives from the Texas Department of Human Services the information the department is required to provide to assist in the enforcement of that obligation.

Added by Acts 1995, 74th Leg., ch. 341, Sec. 1.03, eff. Sept. 1, 1995.

Sec. 231.114. REPORTS OF CHILD SUPPORT PAYMENTS TO CONSUMER REPORTING AGENCIES

(a) The Title IV-D agency shall make information available in accordance with this section to a consumer reporting agency regarding the amount of child support owed and the amount paid by an obligor in a Title IV-D case.

(b) Before disclosing the information to consumer reporting agencies, the Title IV-D agency shall send the obligor a notice by mail to the obligor's last known address. The notice must include:

(1) the information to be released, including the amount of the obligor's child support obligation and delinquency, if any, that will be reported;

(2) the procedure available for the obligor to contest the accuracy of the information; and

(3) a statement that the information will be released if the obligor fails to contest the disclosure before the 30th day after the date of mailing of the notice.

(c) If the obligor does not contest the disclosure within the period specified by Subsection (b), the Title IV-D agency shall make the information available to the consumer reporting agency.

(d) The Title IV-D agency shall regularly update the information released to a consumer reporting agency under this section to ensure the accuracy of the released information.

(e) The Title IV-D agency may charge a consumer reporting agency a reasonable fee for making information available under this section, including all applicable mailing costs.

(f) In this section:

(1) "Consumer reporting agency" means any person that regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for monetary fees, for dues, or on a cooperative nonprofit basis, to furnish consumer reports to third parties.

(2) "Obligor" means any person required to make payments under the terms of a support order for a child.

(3) "Title IV-D case" means a case in which services are being provided by the Title IV-D agency under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) seeking to locate an absent parent, determine parentage, or establish, modify, enforce, or monitor a child support obligation.

Added by Acts 1995, 74th Leg., ch. 341, Sec. 1.03, eff. Sept. 1, 1995.

Sec. 231.115. NONCOOPERATION BY RECIPIENT OF PUBLIC ASSISTANCE

(a) The failure by a person who is a recipient of public assistance under Chapter 31, Human Resources Code, to provide accurate information as required by Section 31.0315, Human Resources Code, shall serve as the basis for a determination by the Title IV-D agency that the person did not cooperate with the Title IV-D agency.

(b) The Title IV-D agency shall:

(1) identify the actions or failures to act by a recipient of public assistance that constitute noncooperation with the Title IV-D agency;

(2) adopt rules governing noncompliance; and

(3) send noncompliance determinations to the Texas Department of Human Services for immediate imposition of sanctions.

(c) In adopting rules under this section that establish the basis for determining that a person has failed to cooperate with the Title IV-D agency, the Title IV-D agency shall consider whether:

(1) good cause exists for the failure to cooperate;

(2) the person has failed to disclose the name and location of an alleged or probable parent of the child, if known by the person, at the time of applying for public assistance or at a subsequent time; and

(3) the person named a man as the alleged father and the man was subsequently excluded by parentage testing as being the father if the person has previously named another man as the child's father.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 75, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 54, eff. Sept. 1, 1999.

Sec. 231.116. INFORMATION ON INTERNET

The Title IV-D agency shall place on the Internet for public access child support information to assist the public in child support matters, including application forms, child support collection in other states, and profiles of certain obligors who are in arrears in paying child support.

Added by Acts 1997, 75th Leg., ch. 420, Sec. 18, eff. Sept. 1, 1997.

Sec. 231.1165. INFORMATION ON SERVICE OF CITATION

The Title IV-D agency shall update the agency's child support automated system to inform the parties in a suit of the service of citation in the suit not later than the first business day after the date the agency receives notice that citation has been served. The information required by this section must be available by telephone and on the Internet.

Added by Acts 2001, 77th Leg., ch. 141, Sec. 1, eff. Sept. 1, 2001.

Sec. 231.117. UNEMPLOYED AND UNDEREMPLOYED OBLIGORS

(a) The Title IV-D agency shall refer to appropriate state and local entities that provide employment services any unemployed or underemployed obligor who is in arrears in court-ordered child support payments.

(b) A referral under Subsection (a) may include:

(1) skills training and job placement through:

(A) the Texas Workforce Commission; or

(B) the agency responsible for the food stamp employment and training program (7 U.S.C. Section 2015(d));

(2) referrals to education and literacy classes; and

(3) counseling regarding:

(A) substance abuse;

(B) parenting skills;

(C) life skills; and

(D) mediation techniques.

(c) The Title IV-D agency may require an unemployed or underemployed obligor to complete the training, classes, or counseling to which the obligor is referred under this section. The agency shall suspend under Chapter 232 the license of an obligor who fails to comply with the requirements of this subsection.

(d) A court or the Title IV-D agency may issue an order that requires the parent to either work, have a plan to pay overdue child support, or participate in work activities appropriate to pay the overdue support.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 7.20(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1072, Sec. 5, eff. Sept. 1, 1999. Renumbered from Sec. 231.115 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(23), eff. Sept. 1, 1999. Renumbered from Sec. 231.115 and amended by Acts 1999, 76th Leg., ch. 556, Sec. 54, eff. Sept. 1, 1999.

Sec. 231.118. SERVICE OF CITATION

(a) The Title IV-D agency may contract with private process servers to serve a citation, a subpoena, an order, or any other document required or appropriate under law to be served a party.

(b) For the purposes of Rule 103 of the Texas Rules of Civil Procedure, a person who serves a citation or any other document under this section is authorized to serve the document without a written court order authorizing the service.

(c) Issuance and return of the process shall be made in accordance with law and shall be verified by the person serving the document.

(d) Notwithstanding Subsection (c), a return of the process made under this section in a suit may not include the address served if:

(1) a pleading filed in the suit requests a finding under Section 105.006(c); or

(2) the court has previously made a finding and ordered nondisclosure under Section 105.006(c) relating to the parties and the order has not been superseded.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 54, eff. Sept. 1, 1999. Amended by Acts 2017, 85th Leg., R.S., Ch. 699 (H.B. 2048), Sec. 2, eff. Sept. 1, 2017.

Sec. 231.119. OMBUDSMAN PROGRAM

(a) The Title IV-D agency shall establish an ombudsman program to process and track complaints against the Title IV-D agency. The director of the Title IV-D agency shall:

(1) designate an employee to serve as chief ombudsman to manage the ombudsman program; and

(2) designate an employee in each field office to act as the ombudsman for the office.

(b) The Title IV-D agency shall develop and implement a uniform process for receiving and resolving complaints against the Title IV-D agency throughout the state. The process shall include statewide procedures to inform the public and recipients of Title IV-D services of the right to file a complaint against the Title IV-D agency, including the mailing addresses and telephone numbers of appropriate Title IV-D agency personnel responsible for receiving complaints and providing related assistance.

(c) The ombudsman in each field office shall ensure that an employee in the field office responds to and attempts to resolve each complaint that is filed with the field office. If a complaint cannot be resolved at the field office level, the ombudsman in the field office shall refer the complaint to the chief ombudsman.

(d) The Title IV-D agency shall maintain a file on each written complaint filed with the Title IV-D agency. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the Title IV-D agency;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(e) The Title IV-D agency, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation of the complaint unless the notice would jeopardize an undercover investigation.

(f) The Title IV-D agency shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the Title IV-D agency's policies and procedures relating to complaint investigation and resolution.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 54, eff. Sept. 1, 1999.

Sec. 231.120. TOLL-FREE TELEPHONE NUMBER FOR EMPLOYERS

The Title IV-D agency shall maintain a toll-free telephone number at which personnel are available during normal business hours to answer questions from employers responsible for withholding child support. The Title IV-D agency shall inform employers about the toll-free telephone number.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 54, eff. Sept. 1, 1999.

Sec. 231.121. AVAILABILITY OF BROCHURES

The Title IV-D agency shall ensure that all Title IV-D brochures published by the agency are available to the public at courthouses where family law cases are heard in the state.

Added by Acts 2001, 77th Leg., ch. 141, Sec. 2, eff. Sept. 1, 2001.

Sec. 231.122. MONITORING CHILD SUPPORT CASES; ENFORCEMENT

The Title IV-D agency shall monitor each Title IV-D case from the date the agency begins providing services on the case. If a child support obligor in a Title IV-D case becomes more than 60 days delinquent in paying child support, the Title IV-D agency shall expedite the commencement of an action to enforce the child support order.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.10, eff. September 1, 2005.

Sec. 231.123. COOPERATION WITH VOLUNTEER INCOME TAX ASSISTANCE PROGRAMS

(a) In order to maximize the amount of any tax refund to which an obligor may be entitled and which may be applied to child support, medical support, and dental support obligations, the Title IV-D agency shall cooperate with volunteer income tax assistance programs in the state in informing obligors of the availability of the programs.

(b) The Title IV-D agency shall publicize the services of the volunteer income tax assistance programs by distributing printed materials regarding the programs and by placing information regarding the programs on the agency's Internet website.

(c) The Title IV-D agency is not responsible for producing or paying the costs of producing the printed materials distributed in accordance with Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 925 (H.B. 401), Sec. 1, eff. September 1, 2005. Renumbered from Family Code, Section 231.122 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(22), eff. September 1, 2007. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 45, eff. September 1, 2018.

Sec. 231.124. CHILD SUPPORT ARREARAGES PAYMENT INCENTIVE PROGRAM

(a) The Title IV-D agency may establish and administer a payment incentive program to promote payment by obligors who are delinquent in satisfying child support arrearages assigned to the Title IV-D agency under Section 231.104(a).

(b) A program established under this section must provide to a participating obligor a credit for every dollar amount paid by the obligor on interest and arrearages balances during each month of the obligor's voluntary enrollment in the program. In establishing a program under this section, the Title IV-D agency by rule must prescribe:

(1) criteria for a child support obligor's initial eligibility to participate in the program;

(2) the conditions for a child support obligor's continued participation in the program;

(3) procedures for enrollment in the program; and

(4) the terms of the financial incentives to be offered under the program.

(c) The Title IV-D agency shall provide eligible obligors with notice of the program and enrollment instructions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 13, eff. September 1, 2011.

SUBCHAPTER C. PAYMENT OF FEES AND COSTS

Sec. 231.201. DEFINITIONS

In this subchapter:

(1) "Federal share" means the portion of allowable expenses for fees and other costs that will be reimbursed by the federal government under federal law and regulations regarding the administration of the Title IV-D program.

(2) "State share" means the portion of allowable expenses for fees and other costs that remain after receipt of the federal share of reimbursement and that is to be reimbursed by the state or may be contributed by certified public expenditure by a county.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.202. AUTHORIZED COSTS AND FEES IN TITLE IV-D CASES

In a Title IV-D case filed under this title, including a case filed under Chapter 159, the Title IV-D agency shall pay only the following costs and fees:

(1) filing fees and fees for issuance and service of process as provided by Chapter 110 of this code and by Sections 51.317(b)(1), (2), and (3) and (b–1), 51.318(b)(2), and 51.319(2), Government Code;

(2) fees for transfer as provided by Chapter 110;

(3) fees for the issuance and delivery of orders and writs of income withholding in the amounts provided by Chapter 110;

(4) the fee for services provided by sheriffs and constables, including:

(A) a fee authorized under Section 118.131, Local Government Code, for serving each item of process to each individual on whom service is required, including service by certified or registered mail; and

(B) a fee authorized under Section 157.103(b) for serving a capias;

(5) the fee for filing an administrative writ of withholding under Section 158.503(d);

(6) the fee for issuance of a subpoena as provided by Section 51.318(b)(1), Government Code; and

(7) a fee authorized by Section 72.031, Government Code, for the electronic filing of documents with a clerk.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 1.04, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.21(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 116, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1217, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 49, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 28, eff. September 1, 2009. Acts 2013, 83rd Leg., R.S., Ch. 1290 (H.B. 2302), Sec. 15, eff. September 1, 2013.

Sec. 231.2025. CONTINGENCY FEES

The Title IV-D agency may pay a contingency fee in a contract or agreement between the agency and a private agency or individual authorized under Section 231.002(c).

Added by Acts 1997, 75th Leg., ch. 420, Sec. 19, eff. Sept. 1, 1997.

Sec. 231.203. STATE EXEMPTION FROM BOND NOT AFFECTED

This subchapter does not affect, nor is this subchapter affected by, the exemption from bond provided by Section 6.001, Civil Practice and Remedies Code.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.204. PROHIBITED FEES IN TITLE IV-D CASES

Except as provided by this subchapter, an appellate court, a clerk of an appellate court, a district or county clerk, sheriff, constable, or other government officer or employee may not charge the Title IV-D agency or a private attorney or political subdivision that has entered into a contract to provide Title IV-D services any fees or other amounts otherwise imposed by law for services rendered in, or in connection with, a Title IV-D case, including:

(1) a fee payable to a district clerk for:

(A) performing services related to the estates of deceased persons or minors;

(B) certifying copies; or

(C) comparing copies to originals;

(2) a court reporter fee, except as provided by Section 231.209;

(3) a judicial fund fee;

(4) a fee for a child support registry, enforcement office, or domestic relations office;

(5) a fee for alternative dispute resolution services;

(6) a filing fee or other costs payable to a clerk of an appellate court; and

(7) a statewide electronic filing system fund fee.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 55, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 55, eff. Sept. 1, 2001. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 10, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 1290 (H.B. 2302), Sec. 16, eff. September 1, 2013.

Sec. 231.205. LIMITATIONS ON LIABILITY OF ATTORNEY GENERAL FOR AUTHORIZED FEES AND COSTS

(a) The Title IV-D agency is liable for a fee or cost under this subchapter only to the extent that an express, specific appropriation is made to the agency exclusively for that purpose. To the extent that state funds are not available, the amount of costs and fees that are not reimbursed by the federal government and that represent the state share shall be paid by certified public expenditure by the county through the clerk of the court, sheriff, or constable. This section does not prohibit the agency from spending other funds appropriated for child support enforcement to provide the initial expenditures necessary to qualify for the federal share.

(b) The Title IV-D agency is liable for the payment of the federal share of reimbursement for fees and costs under this subchapter only to the extent that the federal share is received, and if an amount is paid by the agency and that amount is disallowed by the federal government or the federal share is not otherwise received, the clerk of the court, sheriff, or constable to whom the payment was made shall return the amount to the agency not later than the 30th day after the date on which notice is given by the agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.206. RESTRICTION ON FEES FOR CHILD SUPPORT OR REGISTRY SERVICES IN TITLE IV-D CASES

A district clerk, a county child support registry or enforcement office, or a domestic relations office may not assess or collect fees for processing child support payments or for child support services from the Title IV-D agency, a managing conservator, or a possessory conservator in a Title IV-D case, except as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.207. METHOD OF BILLING FOR ALLOWABLE FEES

(a) To be entitled to reimbursement under this subchapter, the clerk of the court, sheriff, or constable must submit one monthly billing to the Title IV-D agency.

(b) The monthly billing must be in the form and manner prescribed by the Title IV-D agency and be approved by the clerk, sheriff, or constable.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.208. AGREEMENTS FOR REIMBURSEMENT IN LIEU OF FEES

(a) The Title IV-D agency and a qualified county may enter into a written agreement under which reimbursement for salaries and certain other actual costs incurred by the clerk, sheriff, or constable in Title IV-D cases is provided to the county.

(b) A county may not enter into an agreement for reimbursement under this section unless the clerk, sheriff, or constable providing service has at least two full-time employees each devoted exclusively to providing services in Title IV-D cases.

(c) Reimbursement made under this section is in lieu of all costs and fees provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.209. PAYMENT FOR SERVICES NOT AFFECTED BY THIS SUBCHAPTER

Without regard to this subchapter and specifically Section 231.205, the Title IV-D agency may pay the costs for:

(1) the services of an official court reporter for the preparation of statements of facts;

(2) the costs for the publication of citation served by publication; and

(3) mileage or other reasonable travel costs incurred by a sheriff or constable when traveling out of the county to execute an outstanding warrant or capias, to be reimbursed at a rate not to exceed the rate provided for mileage or other costs incurred by state employees in the General Appropriations Act.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 1.05, eff. Sept. 1, 1995.

Sec. 231.210. AUTHORITY TO PAY LITIGATION EXPENSES

(a) The Title IV-D agency may pay all fees, expenses, costs, and bills necessary to secure evidence and to take the testimony of a witness, including advance payments or purchases for transportation, lodging, meals, and incidental expenses of custodians of evidence or witnesses whose transportation is necessary and proper for the production of evidence or the taking of testimony in a Title IV-D case.

(b) In making payments under this section, the Title IV-D agency shall present vouchers to the comptroller that have been sworn to by the custodian or witness and approved by the agency. The voucher shall be sufficient to authorize payment without the necessity of a written contract.

(c) The Title IV-D agency may directly pay a commercial transportation company or commercial lodging establishment for the expense of transportation or lodging of a custodian or witness.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 231.211. AWARD OF COST AGAINST NONPREVAILING PARTY IN TITLE IV-D CASE

(a) At the conclusion of a Title IV-D case, the court may assess attorney's fees and all court costs as authorized by law against the nonprevailing party, except that the court may not assess those amounts against the Title IV-D agency or a private attorney or political subdivision that has entered into a con-

tract under this chapter or any party to whom the agency has provided services under this chapter. Such fees and costs may not exceed reasonable and necessary costs as determined by the court.

(b) The clerk of the court may take any action necessary to collect any fees or costs assessed under this section.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re C.Y.K.S., 549 S.W.3d 588 (Tex. 2018). Section 231.211, which prohibits the assessment of fees and costs against a party to whom agency has provided Title IV-D services, including determination of paternity and establishment, review, adjustment, and enforcement of child support orders, applies to trial and appellate proceedings alike.

SUBCHAPTER D. LOCATION OF PARENTS AND RESOURCES

Sec. 231.301. TITLE IV-D PARENT LOCATOR SERVICES

(a) The parent locator service conducted by the Title IV-D agency shall be used to obtain information for:

(1) child support establishment and enforcement purposes regarding the identity, social security number, location, employer and employment benefits, income, and assets or debts of any individual under an obligation to pay child support, medical support, or dental support or to whom a support obligation is owed; or

(2) the establishment of paternity.

(b) As authorized by federal law, the following persons may receive information under this section:

(1) a person or entity that contracts with the Title IV-D agency to provide services authorized under Title IV-D or an employee of the Title IV-D agency;

(2) an attorney who has the duty or authority, by law, to enforce an order for possession of or access to a child;

(3) a court, or an agent of the court, having jurisdiction to render or enforce an order for possession of or access to a child;

(4) the resident parent, legal guardian, attorney, or agent of a child who is not receiving public assistance; and

(5) a state agency that administers a program operated under a state plan as provided by 42 U.S.C. Section 653(c).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 76, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 56, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 46, eff. September 1, 2018.

Sec. 231.302. INFORMATION TO ASSIST IN LOCATION OF PERSONS OR PROPERTY

(a) The Title IV-D agency of this or another state may request and obtain information relating to the identity, location, employment, compensation, benefits, income, and property holdings or other

assets of any person from a state or local government agency, private company, institution, or other entity as necessary to establish, modify, or enforce a support order.

(b) A government agency, private company, institution, or other entity shall provide the information requested under Subsection (a) directly to the Title IV-D agency not later than the seventh day after the request to obtain information is received, without the requirement of payment of a fee for the information, and shall, subject to safeguards on privacy and information security, provide the information in the most efficient and expeditious manner available, including electronic or automated transfer and interface. Any individual or entity disclosing information under this section in response to a request from a Title IV-D agency may not be held liable in any civil action or proceeding to any person for the disclosure of information under this subsection.

(c) Except as provided by Subsection (c–1) or (c–2), to assist in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Section 601 et seq. and 42 U.S.C. Section 651 et seq.):

(1) each licensing authority shall request and each applicant for a license shall provide the applicant's social security number;

(2) each agency administering a contract that provides for a payment of state funds shall request and each individual or entity bidding on a state contract shall provide the individual's or entity's social security number as required by Section 231.006; and

(3) each agency administering a state-funded grant or loan program shall request and each applicant for a grant or loan shall provide the applicant's social security number as required by Section 231.006.

(c–1) For purposes of issuing a license to carry a concealed handgun under Subchapter H, Chapter 411, Government Code, the Department of Public Safety is not required to request, and an applicant is not required to provide, the applicant's social security number.

(c–2) For purposes of issuing a fishing or hunting license, the Texas Parks and Wildlife Department is not required to request, and an applicant is not required to provide, the applicant's social security number if the applicant is 13 years of age or younger.

(d) This section does not limit the right of an agency or licensing authority to collect and use a social security number under another provision of law.

(e) Except as provided by Subsection (d), a social security number provided under this section is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Part A or D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601 et seq. and 651 et seq).

(f) Information collected by the Title IV-D agency under this section may be used only for child support purposes.

(g) In this section, "licensing authority" has the meaning assigned by Section 232.001.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 84, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 420, Sec. 20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 77, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.28, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 56, eff. Sept. 1, 2001. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 665 (H.B. 1349), Sec. 1, eff. January 1, 2014. Acts 2015, 84th Leg., R.S., Ch. 153 (H.B. 821), Sec. 1, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 963 (S.B. 1727), Sec. 4, eff. September 1, 2015.

Sec. 231.303. TITLE IV-D ADMINISTRATIVE SUBPOENA

(a) The Title IV-D agency of this state or another state may issue an administrative subpoena to any individual or private or public entity in this state to furnish information necessary to carry out the purposes of child support enforcement under 42 U.S.C. Section 651 et seq. or this chapter.

(b) An individual or entity receiving an administrative subpoena under this section shall comply with the subpoena. The Title IV-D agency may impose a fine in an amount not to exceed $500 on an individual or entity that fails without good cause to comply with an administrative subpoena. An alleged or presumed father or a parent who fails to comply with a subpoena without good cause may also be subject to license suspension under Chapter 232.

(c) A court may compel compliance with an administrative subpoena and with any administrative fine for failure to comply with the subpoena and may award attorney's fees and costs to the Title IV-D agency in enforcing an administrative subpoena on proof that an individual or organization failed without good cause to comply with the subpoena.

(d) An individual or organization may not be liable in a civil action or proceeding for disclosing financial or other information to a Title IV-D agency under this section. The Title IV-D agency may disclose information in a financial record obtained from a financial institution only to the extent necessary:

(1) to establish, modify, or enforce a child support obligation; or

(2) to comply with Section 233.001, as added by Chapter 420, Acts of the 75th Legislature, Regular Session, 1997.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 78, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 859, Sec. 5, eff. Sept. 1, 1999.

Sec. 231.305. MEMORANDUM OF UNDERSTANDING ON CHILD SUPPORT FOR CHILDREN RECEIVING PUBLIC ASSISTANCE

(a) The Title IV-D agency and the Texas Department of Human Services by rule shall adopt a memorandum of understanding governing the establishment and enforcement of court-ordered child support in cases involving children who receive financial assistance under Chapter 31, Human Resources Code. The memorandum shall require the agency and the department to:

(1) develop procedures to ensure that the information the department is required to collect to establish and enforce child support:

(A) is collected from the person applying to receive the financial assistance at the time the application is filed;

(B) is accurate and complete when the department forwards the information to the agency;

(C) is not information previously reported to the agency; and

(D) is forwarded to the agency in an expeditious manner;

(2) develop procedures to ensure that the agency does not duplicate the efforts of the department in gathering necessary information;

(3) clarify each agency's responsibilities in the establishment and enforcement of child support;

(4) develop guidelines for use by eligibility workers and child support enforcement officers in obtaining from an applicant the information required to establish and enforce child support for that child;

(5) develop training programs for appropriate department personnel to enhance the collection of information for child support enforcement;

(6) develop a standard time, not to exceed 30 days, for the department to initiate a sanction on request from the agency;

(7) develop procedures for agency participation in department appeal hearings relating to noncompliance sanctions;

(8) develop performance measures regarding the timeliness and the number of sanctions resulting from agency requests for noncompliance sanctions; and

(9) prescribe:

(A) the time in which the department is required to forward information under Subdivision (1)(D); and

(B) what constitutes complete information under Subdivision (1)(B).

(b) The Title IV-D agency and the Texas Department of Human Services shall review and renew or modify the memorandum not later than January 1 of each even-numbered year.

Added by Acts 1995, 74th Leg., ch. 341, Sec. 1.07, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 57, eff. Sept. 1, 1999.

Sec. 231.306. MAXIMIZING MEDICAL SUPPORT AND DENTAL SUPPORT ESTABLISHMENT AND COLLECTION BY THE TITLE IV-D AGENCY

(a) On the installation of an automated child support enforcement system, the Title IV-D agency is strongly encouraged to:

(1) maximize the collection of medical support and dental support; and

(2) establish cash medical support orders for children eligible for medical assistance under the state Medicaid program for whom private insurance coverage is not available.

(b) In this section:

(1) "Medical support" has the meaning assigned by Section 101.020.

(2) "Dental support" has the meaning assigned by Section 101.0095.

Added by Acts 1995, 74th Leg., ch. 341, Sec. 2.03, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 47, eff. September 1, 2018.

Sec. 231.307. FINANCIAL INSTITUTION DATA MATCHES

(a) The Title IV-D agency shall develop a system meeting the requirements of federal law (42 U.S.C. Sections 666(a)(4) and (17)) for the exchange of data with financial institutions doing business in the state to identify an account of an obligor owing past-due child support and to enforce support obligations against the obligor, including the imposition of a lien and a levy and execution on an obligor's assets held in financial institutions as required by federal law (42 U.S.C. Section 666(c)(1)(G)).

(b) The Title IV-D agency by rule shall establish procedures for data matches authorized under this section.

(c) The Title IV-D agency may enter into an agreement with one or more states to create a consortium for data matches authorized under this section. The Title IV-D agency may contract with a vendor selected by the consortium to perform data matches with financial institutions.

(d) A financial institution providing information or responding to a notice of child support lien or levy provided under Subchapter G, Chapter 157, or otherwise acting in good faith to comply with the Title IV-D agency's procedures under this section may not be liable under any federal or state law for any damages that arise from those acts.

(e) In this section:

(1) "Financial institution" has the meaning assigned by Section 157.311; and

(2) "Account" has the meaning assigned by Section 157.311.

(f) A financial institution participating in data matches authorized by this section may provide the Title IV-D agency an address for the purpose of service of notices or process required in actions under this section or Subchapter G, Chapter 157.

(g) This section does not apply to an insurer subject to the reporting requirements under Section 231.015.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 79, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 58, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 57, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 14, eff. September 1, 2011.

Sec. 231.308. PUBLIC IDENTIFICATION OF CERTAIN OBLIGORS

(a) The Title IV-D agency shall develop a program to identify publicly certain child support obligors who are delinquent in the payment of child support. The program shall include the displaying of photographs and profiles of obligors in public and private locations. The Title IV-D agency shall use posters, the news media, and other cost-effective methods to display photographs and profiles of certain obligors who are in arrears in paying child support. The Title IV-D agency shall divide the state into at least six regions for local identification of certain child support obligors who are delinquent in the payment of child support.

(b) The Title IV-D agency may not disclose information under this section that is by law required to remain confidential.

Added by Acts 1997, 75th Leg., ch. 420, Sec. 21, eff. Sept. 1, 1997.

Sec. 231.309. REWARDS FOR INFORMATION

(a) The Title IV-D agency may offer a reward to an individual who provides information to the agency that leads to the collection of child support owed by an obligor who is delinquent in paying support.

(b) The Title IV-D agency shall adopt rules providing for the amounts of rewards offered under this section and the circumstances under which an individual providing information described in Subsection (a) is entitled to receive a reward.

(c) A reward paid under this section shall be paid from the child support retained collections account.

Added by Acts 1997, 75th Leg., ch. 420, Sec. 21, eff. Sept. 1, 1997.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE D. ADMINISTRATIVE SERVICES

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Sec. 232.001. DEFINITIONS

In this chapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to renewal, suspension, revocation, forfeiture, or termination by a licensing authority; and

(C) a person must obtain to:

(i) practice or engage in a particular business, occupation, or profession;

(ii) operate a motor vehicle on a public highway in this state; or

(iii) engage in any other regulated activity, including hunting, fishing, or other recreational activity for which a license or permit is required.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues or renews a license or that otherwise has authority to suspend or refuse to renew a license.

(3) "Order suspending license" means an order issued by the Title IV-D agency or a court directing a licensing authority to suspend or refuse to renew a license.

(3–a) "Renewal" means any instance when a licensing authority:

(A) renews, extends, recertifies, or reissues a license; or

(B) periodically certifies a licensee to be in good standing with the licensing authority based on the required payment of fees or dues or the performance of some other mandated action or activity.

(4) "Subpoena" means a judicial or administrative subpoena issued in a parentage determination or child support proceeding under this title.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 82, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 58, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 50, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 8, eff. September 1, 2015.

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER

Unless otherwise restricted or exempted, all licensing authorities are subject to this chapter.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1280, Sec. 1.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1288, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1254, Sec. 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1477, Sec. 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 394, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.003, eff. Feb. 1, 2004. Amended by: Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 4.01, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 51, eff. September 1, 2007.

Sec. 232.0021. APPLICATION OF CHAPTER TO TEXAS LOTTERY COMMISSION

With respect to the Texas Lottery Commission, this chapter applies only to a lottery ticket sales agent license issued under Chapter 466, Government Code.

Added by Acts 2001, 77th Leg., ch. 394, Sec. 3, eff. Sept. 1, 2001.

Sec. 232.0022. SUSPENSION OR NONRENEWAL OF MOTOR VEHICLE REGISTRATION

(a) The Texas Department of Motor Vehicles is the appropriate licensing authority for suspension or nonrenewal of a motor vehicle registration under this chapter.

(b) The suspension or nonrenewal of a motor vehicle registration under this chapter does not:

(1) encumber the title to the motor vehicle or otherwise affect the transfer of the title to the vehicle; or

(2) affect the sale, purchase, or registration of the motor vehicle by a person who holds a general distinguishing number issued under Chapter 503, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 52, eff. September 1, 2007. Amended by: Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3C.02, eff. September 1, 2009.

Sec. 232.003. SUSPENSION OF LICENSE

(a) A court or the Title IV-D agency may issue an order suspending a license as provided by this chapter if an individual who is an obligor:

(1) owes overdue child support in an amount equal to or greater than the total support due for three months under a support order;

(2) has been provided an opportunity to make payments toward the overdue child support under a court-ordered or agreed repayment schedule; and

(3) has failed to comply with the repayment schedule.

(b) A court or the Title IV-D agency may issue an order suspending a license as provided by this chapter if a parent or alleged parent has failed, after receiving appropriate notice, to comply with a subpoena.

(c) A court may issue an order suspending license as provided by this chapter for an individual for whom a court has rendered an enforcement order under Chapter 157 finding that the individual has failed to comply with the terms of a court order providing for the possession of or access to a child.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995; Amended by Acts 1997, 75th Leg., ch. 420, Sec. 22, 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 83, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 59, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 724, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1023, Sec. 59, eff. Sept. 1, 2001.

Sec. 232.004. PETITION FOR SUSPENSION OF LICENSE

(a) A child support agency or obligee may file a petition to suspend, as provided by this chapter, a license of an obligor who has an arrearage equal to or greater than the total support due for three months under a support order.

(b) In a Title IV-D case, the petition shall be filed with the Title IV-D agency, the court of continuing jurisdiction, or the tribunal in which a child support order has been registered under Chapter 159. The tribunal in which the petition is filed obtains jurisdiction over the matter.

(c) In a case other than a Title IV-D case, the petition shall be filed in the court of continuing jurisdiction or the court in which a child support order has been registered under Chapter 159.

(d) A proceeding in a case filed with the Title IV-D agency under this chapter is governed by the contested case provisions of Chapter 2001, Government Code, except that Section 2001.054 does not apply to the proceeding. The director of the Title IV-D agency or the director's designee may render a final decision in a contested case proceeding under this chapter.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 84, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 60, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 53, eff. September 1, 2007.

Sec. 232.005. CONTENTS OF PETITION

(a) A petition under this chapter must state that license suspension is required under Section 232.003 and allege:

(1) the name and, if known, social security number of the individual;

(2) the name of the licensing authority that issued a license the individual is believed to hold; and

(3) the amount of arrearages owed under the child support order or the facts associated with the individual's failure to comply with:

(A) a subpoena; or

(B) the terms of a court order providing for the possession of or access to a child.

(b) A petition under this chapter may include as an attachment of a copy of:

(1) the record of child support payments maintained by the Title IV-D registry or local registry;

(2) the subpoena with which the individual has failed to comply, together with proof of service of the subpoena; or

(3) with respect to a petition for suspension under Section 232.003(c):

(A) the enforcement order rendered under Chapter 157 describing the manner in which the individual was found to have not complied with the terms of a court order providing for the possession of or access to a child; and

(B) the court order containing the provisions that the individual was found to have violated.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 85, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 724, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1023, Sec. 60, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 29, eff. June 19, 2009.

Sec. 232.006. NOTICE

(a) On the filing of a petition under Section 232.004, the clerk of the court or the Title IV-D agency shall deliver to the individual:

(1) notice of the individual's right to a hearing before the court or agency;

(2) notice of the deadline for requesting a hearing; and

(3) a hearing request form if the proceeding is in a Title IV-D case:

(b) Notice under this section may be served:

(1) if the party has been ordered under Chapter 105 to provide the court and registry with the party's current mailing address, by mailing a copy of the notice to the respondent, together with a copy of the petition, by first class mail to the last mailing address of the respondent on file with the court and the state case registry; or

(2) as in civil cases generally.

(c) The notice must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:

"AN ACTION TO SUSPEND ONE OR MORE LICENSES ISSUED TO YOU HAS BEEN FILED AS PROVIDED BY CHAPTER 232, TEXAS FAMILY CODE. YOU MAY EMPLOY AN ATTORNEY TO REPRESENT YOU IN THIS ACTION. IF YOU OR YOUR ATTORNEY DO NOT REQUEST A HEARING BEFORE THE 21ST DAY AFTER THE DATE OF SERVICE OF THIS NOTICE, AN ORDER SUSPENDING YOUR LICENSE MAY BE RENDERED."

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 86, eff; Sept. 1, 1997; Acts 1997, 75th Leg., ch. 976, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 178, Sec. 11, eff. Aug. 30, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 54, eff. September 1, 2007.

Sec. 232.007. HEARING ON PETITION TO SUSPEND LICENSE

(a) A request for a hearing and motion to stay suspension must be filed with the court or Title IV-D agency by the individual not later than the 20th day after the date of service of the notice under Section 232.006.

(b) If a request for a hearing is filed, the court or Title IV-D agency shall:

(1) promptly schedule a hearing;

(2) notify each party of the date, time and location of the hearing; and

(3) stay suspension pending the hearing.

(c) In a case involving support arrearages, a record of child support payments made by the Title IV-D agency or a local registry is evidence of whether the payments were made. A copy of the record appearing regular on its face shall be admitted as evidence at a hearing under this chapter, including a hearing on a motion to revoke a stay. Either party may offer controverting evidence.

(d) In a case in which an individual has failed to comply with a subpoena, proof of service is evidence of delivery of the subpoena.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 87, eff. Sept. 1, 1997.

Sec. 232.008. ORDER SUSPENDING LICENSE FOR FAILURE TO PAY CHILD SUPPORT

(a) On making the findings required by Section 232.003, the court or Title IV-D agency shall render an order suspending the license unless the individual:

(1) proves that all arrearages and the current month's support have been paid;

(2) shows good cause for failure to comply with the subpoena or the terms of the court order providing for the possession of or access to a child; or

(3) establishes an affirmative defense as provided by Section 157.008(c).

(b) Subject to Subsection (b–1), the court or Title IV-D agency may stay an order suspending a license conditioned on the individual's compliance with:

(1) a reasonable repayment schedule that is incorporated in the order;

(2) the requirements of a reissued and delivered subpoena; or

(3) the requirements of any court order pertaining to the possession of or access to a child.

(b–1) The court or Title IV-D agency may not stay an order under Subsection (b)(1) unless the individual makes an immediate partial payment in an amount specified by the court or Title IV-D agency. The amount specified may not be less than $200.

(c) An order suspending a license with a stay of the suspension may not be served on the licensing authority unless the stay is revoked as provided by this chapter.

(d) A final order suspending license rendered by a court or the Title IV-D agency shall be forwarded to the appropriate licensing authority by the clerk of the court or Title IV-D agency. The clerk shall collect from an obligor a fee of $5 for each order mailed.

(e) If the court or Title IV-D agency renders an order suspending license, the individual may also be ordered not to engage in the licensed activity.

(f) If the court or Title IV-D agency finds that the petition for suspension should be denied, the petition shall be dismissed without prejudice, and an order suspending license may not be rendered.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 88, eff; Sept. 1, 1997; Acts 1997, 75th Leg., ch. 976, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, Sec. 61, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 724, Sec. 4, eff. Sept. 1, 2001. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 674 (H.B. 1846), Sec. 1, eff. September 1, 2013.

Sec. 232.009. DEFAULT ORDER

The court or Title IV-D agency shall consider the allegations of the petition for suspension to be admitted and shall render an order suspending the license of an obligor without the requirement of a hearing if the court or Title IV-D agency determines that the individual failed to respond to a notice issued under Section 232.006 by:

(1) requesting a hearing; or

(2) appearing at a scheduled hearing.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 420, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 89, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 61, eff. Sept. 1, 2001.

Sec. 232.010. REVIEW OF FINAL ADMINISTRATIVE ORDER

An order issued by a Title IV-D agency under this chapter is a final agency decision and is subject to review under the substantial evidence rule as provided by Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995.

Sec. 232.011. ACTION BY LICENSING AUTHORITY

(a) On receipt of a final order suspending license, the licensing authority shall immediately determine if the authority has issued a license to the individual named on the order and, if a license has been issued:

(1) record the suspension of the license in the licensing authority's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license if required by law for other cases in which a license is suspended.

(b) A licensing authority shall implement the terms of a final order suspending license without additional review or hearing. The authority may provide notice as appropriate to the license holder or to others concerned with the license.

(c) A licensing authority may not modify, remand, reverse, vacate, or stay an order suspending license issued under this chapter and may not review, vacate, or reconsider the terms of a final order suspending license.

(d) An individual who is the subject of a final order suspending license is not entitled to a refund for any fee or deposit paid to the licensing authority.

(e) An individual who continues to engage in the business, occupation, profession, or other licensed activity after the implementation of the order suspending license by the licensing authority is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended that apply to any other license holder of that licensing authority.

(f) A licensing authority is exempt from liability to a license holder for any act authorized under this chapter performed by the authority.

(g) Except as provided by this chapter, an order suspending license or dismissing a petition for the suspension of a license does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license.

(h) The denial or suspension of a driver's license under this chapter is governed by this chapter and not by the general licensing provisions of Chapter 521, Transportation Code.

(i) An order issued under this chapter to suspend a license applies to each license issued by the licensing authority subject to the order for which the obligor is eligible. The licensing authority may not issue or renew any other license for the obligor until the court or the Title IV-D agency renders an order vacating or staying an order suspending license.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.184, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, Sec. 90, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 62, eff. Sept. 1, 2001.

Sec. 232.012. MOTION TO REVOKE STAY

(a) The obligee, support enforcement agency, court, or Title IV-D agency may file a motion to revoke the stay of an order suspending license if the individual who is subject of an order suspending license does not comply with:

(1) the terms of a reasonable repayment plan entered into by the individual;

(2) the requirements of a reissued subpoena; or

(3) the terms of any court order pertaining to the possession of or access to a child.

(b) Notice to the individual of a motion to revoke stay under this section may be given by personal service or by mail to the address provided by the individual, if any, in the order suspending license. The notice must include a notice of hearing. The notice must be provided to the individual not less than 10 days before the date of the hearing.

(c) A motion to revoke stay must allege the manner in which the individual failed to comply with the repayment plan, the reissued subpoena, or the court order pertaining to possession of or access to a child.

(d) If the court or Title IV-D agency finds that the individual is not in compliance with the terms of the repayment plan, reissued subpoena, or court order pertaining to possession of or access to a child, the court or agency shall revoke the stay of the order suspending license and render a final order suspending license.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 91, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 724, Sec. 5, eff. Sept. 1, 2001.

Sec. 232.013. VACATING OR STAYING ORDER SUSPENDING LICENSE

(a) The court or Title IV-D agency may render an order vacating or staying an order suspending an individual's license if:

(1) the individual has:

(A) paid all delinquent child support or has established a satisfactory payment record;

(B) complied with the requirements of a reissued subpoena; or

(C) complied with the terms of any court order providing for the possession of or access to a child; or

(2) the court or Title IV-D agency determines that good cause exists for vacating or staying the order; or

(b) The clerk of the court or Title IV-D agency shall promptly deliver an order vacating or staying an order suspending license to the appropriate licensing authority. The clerk shall collect from an obligor a fee of $5 for each order mailed.

(c) On receipt of an order vacating or staying an order suspending license, the licensing authority shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(d) An order rendered under this section does not affect the right of the child support agency or obligee to any other remedy provided by law, including the right to seek relief under this chapter. An

order rendered under this section does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license as otherwise provided by law.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 92, eff; Sept. 1, 1997; Acts 1997, 75th Leg., ch. 976, Sec. 9, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 724, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 16, eff. Sept. 1, 2003.

Sec. 232.0135. DENIAL OF LICENSE ISSUANCE OR RENEWAL

(a) A child support agency, as defined by Section 101.004, may provide notice to a licensing authority concerning an obligor who has failed to pay child support under a support order for six months or more that requests the authority to refuse to approve an application for issuance of a license to the obligor or renewal of an existing license of the obligor.

(b) A licensing authority that receives the information described by Subsection (a) shall refuse to approve an application for issuance of a license to the obligor or renewal of an existing license of the obligor until the authority is notified by the child support agency that the obligor has:

(1) paid all child support arrearages;

(2) made an immediate payment of not less than $200 toward child support arrearages owed and established with the agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(3) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or

(4) successfully contested the denial of issuance or renewal of license under Subsection (d).

(c) On providing a licensing authority with the notice described by Subsection (a), the child support agency shall send a copy to the obligor by first class mail and inform the obligor of the steps the obligor must take to permit the authority to approve the obligor's application for license issuance or renewal.

(d) An obligor receiving notice under Subsection (c) may request a review by the child support agency to resolve any issue in dispute regarding the identity of the obligor or the existence or amount of child support arrearages. The agency shall promptly provide an opportunity for a review, either by telephone or in person, as appropriate to the circumstances. After the review, if appropriate, the agency may notify the licensing authority that it may approve the obligor's application for issuance or renewal of license. If the agency and the obligor fail to resolve any issue in dispute, the obligor, not later than the 30th day after the date of receiving notice of the agency's determination from the review, may file a motion with the court to direct the agency to withdraw the notice under Subsection (a) and request a hearing on the motion. The obligor's application for license issuance or renewal may not be approved by the licensing authority until the court rules on the motion. If, after a review by the agency or a hearing by the court, the agency withdraws the notice under Subsection (a), the agency shall reimburse the obligor the amount of any fee charged the obligor under Section 232.014

(e) If an obligor enters into a repayment agreement with the child support agency under this section, the agency may incorporate the agreement in an order to be filed with and confirmed by the court in the manner provided for agreed orders under Chapter 233.

(f) In this section, "licensing authority" does not include the State Securities Board.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 55, eff. September 1, 2007. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 15, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B.

1674), Sec. 16, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 674 (H.B. 1846), Sec. 2, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 11, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 859 (S.B. 1726), Sec. 9, eff. September 1, 2015.

Sec. 232.014. FEE BY LICENSING AUTHORITY

(a) A licensing authority may charge a fee to an individual who is the subject of an order suspending license or of an action of a child support agency under Section 232.0135 to deny issuance or renewal of license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

(b) A fee collected by the Texas Department of Motor Vehicles shall be deposited to the credit of the Texas Department of Motor Vehicles fund. A fee collected by the Department of Public Safety shall be deposited to the credit of the state highway fund.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 911, Sec. 93, eff. Sept. 1, 1997. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 56, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3C.03, eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 17, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 1287 (H.B. 2202), Sec. 1, eff. September 1, 2013.

Sec. 232.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND TITLE IV-D AGENCY

(a) The Title IV-D agency may request from each licensing authority the name, address, social security number, license renewal date, and other identifying information for each individual who holds, applies for, or renews a license issued by the authority.

(b) A licensing authority shall provide the requested information in the form and manner identified by the Title IV-D agency.

(c) The Title IV-D agency may enter into a cooperative agreement with a licensing authority to administer this chapter in a cost-effective manner.

(d) The Title IV-D agency may adopt a reasonable implementation schedule for the requirements of this section.

(e) The Title IV-D agency, the comptroller, and the Texas Alcoholic Beverage Commission shall by rule specify additional prerequisites for the suspension of licenses relating to state taxes collected under Title 2, Tax Code. The joint rules must be adopted not later than March 1, 1996.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 63, eff. Sept. 1, 2001.

Sec. 232.016. RULES, FORMS, AND PROCEDURES

The Title IV-D agency by rule shall prescribe forms and procedures for the implementation of this chapter.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 85, eff. Sept. 1, 1995.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE D. ADMINISTRATIVE SERVICES

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Sec. 233.001. PURPOSE

(a) The purpose of the procedures specified in the child support review process authorized by this chapter is to enable the Title IV-D agency to take expedited administrative actions to establish, modify, and enforce child support, medical support, and dental support obligations, to determine parentage, or to take any other action authorized or required under Part D, Title IV, of the federal Social Security Act (42 U.S.C. Section 651 et seq.), and Chapter 231.

(b) A child support review order issued under this chapter and confirmed by a court constitutes an order of the court and is enforceable by any means available for the enforcement of child support obligations under this code, including withholding income, filing a child support lien, and suspending a license under Chapter 232.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.401 and amended by Acts 1997, 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 48, eff. September 1, 2018.

Sec. 233.002. AGREEMENTS ENCOURAGED

To the extent permitted by this chapter, the Title IV-D agency shall encourage agreement of the parties.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.402 and amended by Acts 1997, 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.003. BILINGUAL FORMS REQUIRED

A notice or other form used to implement administrative procedures under this chapter shall be printed in both Spanish and English.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.403 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.004. INTERPRETER REQUIRED

If a party participating in an administrative proceeding under this chapter does not speak English or is hearing impaired, the Title IV-D agency shall provide for interpreter services at no charge to the party.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.404 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.005. INITIATING ADMINISTRATIVE ACTIONS

An administrative action under this chapter may be initiated by issuing a notice of child support review under Section 233.006 or a notice of proposed child support review order under Section 233.009 or 233.0095 to each party entitled to notice.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.405 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 63, eff. Sept. 1, 1999.

Sec. 233.006. CONTENTS OF NOTICE OF CHILD SUPPORT REVIEW

(a) The notice of child support review issued by the Title IV-D agency must:

(1) describe the procedure for a child support review, including the procedures for requesting a negotiation conference;

(2) inform the recipient that the recipient may be represented by legal counsel during the review process or at a court hearing; and

(3) inform the recipient that the recipient may refuse to participate or cease participation in the child support review process, but that the refusal by the recipient to participate will not prevent the completion of the process or the filing of a child support review order.

(b) In addition to the information required by Subsection (a), the notice of child support review may inform the recipient that:

(1) an affidavit of financial resources included with the notice must be executed by the recipient and returned to the Title IV-D agency not later than the 15th day after the date the notice is received or delivered; and

(2) if the requested affidavit of financial resources is not returned as required, the agency may:

(A) proceed with the review using the information that is available to the agency; and

(B) file a legal action without further notice to the recipient, except as otherwise required by law.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.406 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 64, eff. Sept. 1, 2001.

Sec. 233.007. SERVICE OF NOTICE

(a) A notice required in an administrative action under this chapter may be delivered by personal service or first class mail on each party entitled to citation or notice as provided by Chapter 102.

(b) This section does not apply to notice required on filing of a child support review order or to later judicial actions.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.407 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.008. ADMINISTRATIVE SUBPOENA IN CHILD SUPPORT REVIEW

In a child support review under this chapter, the Title IV-D agency may issue an administrative subpoena authorized under Chapter 231 to any individual or organization believed to have financial or other information needed to establish, modify, or enforce a support order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.408 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.009. NOTICE OF PROPOSED CHILD SUPPORT REVIEW ORDER; NEGOTIATION CONFERENCE

(a) After an investigation and assessment of financial resources, the Title IV-D agency may serve on the parties a notice of proposed child support review order in enforcing or modifying an existing order.

(b) The notice of proposed child support review order shall state:

(1) the amount of periodic payment of child support due, the amount of any overdue support that is owed as an arrearage as of the date of the notice, and the amounts that are to be paid by the obligor for current support due and in payment on the arrearage owed;

(2) that the person identified in the notice as the party responsible for payment of the support amounts may contest the notice order on the grounds that:

(A) the respondent is not the responsible party;

(B) the dependent child is no longer entitled to child support; or

(C) the amount of monthly support or arrearage is incorrectly stated; and

(3) that, if the person identified in the notice as the party responsible for payment of the support amounts does not contest the notice in writing or request a negotiation conference to discuss the notice not later than the 15th day after the date the notice was delivered, the Title IV-D agency may file a child support review order for child support, medical support, and dental support for the child as provided by Chapter 154 according to the information available to the agency.

(c) The Title IV-D agency may schedule a negotiation conference without a request from a party.

(d) The Title IV-D agency shall schedule a negotiation conference on the timely request of a party.

(e) The agency may conduct a negotiation conference, or any part of a negotiation conference, by telephone conference call, by video conference, as well as in person and may adjourn the conference for a reasonable time to permit mediation of issues that cannot be resolved by the parties and the agency.

(f) Notwithstanding any other provision of this chapter, if the parties have agreed to the terms of a proposed child support review order and each party has signed the order, including a waiver of the right to service of process as provided by Section 233.018, the Title IV-D agency may immediately present the order and waiver to the court for confirmation without conducting a negotiation conference or requiring the production of financial information.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.409 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 65, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 49, eff. September 1, 2018.

Sec. 233.0095. NOTICE OF PROPOSED CHILD SUPPORT REVIEW ORDER IN CASES OF ACKNOWLEDGED PATERNITY

(a) If an individual has signed the acknowledgment of paternity as the father of the child or executed a statement of paternity, the Title IV-D agency may serve on the parties a notice of proposed child support review order.

(b) The notice of proposed child support review order shall state:

(1) the amount of periodic payment of child support due;

(2) that the person identified in the notice as the party responsible for payment of the support amounts may only contest the amount of monthly support; and

(3) that, if the person identified in the notice as the party responsible for payment of the support amounts does not contest the notice in writing or request a negotiation conference to discuss the notice not later than the 15th day after the date the notice was delivered, the Title IV-D agency may file the child support order for child support, medical support, and dental support for the child as provided by Chapter 154 according to the information available to the agency.

(c) The Title IV-D agency may schedule a negotiation conference without a request from a party.

(d) The Title IV-D agency shall schedule a negotiation conference on the timely request of a party.

(e) The Title IV-D agency may conduct a negotiation conference, or any part of a negotiation conference, by telephone conference call, by video conference, or in person and may adjourn the conference for a reasonable time to permit mediation of issues that cannot be resolved by the parties and the agency.

(f) Notwithstanding any other provision of this chapter, if paternity has been acknowledged, the parties have agreed to the terms of a proposed child support review order, and each party has signed the order, including a waiver of the right to service of process as provided by Section 233.018, the Title IV-D agency may immediately present the order and waiver to the court for confirmation without conducting a negotiation conference or requiring the production of financial information.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 64, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 66, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 50, eff. September 1, 2018.

Sec. 233.010. NOTICE OF NEGOTIATION CONFERENCE; FAILURE TO ATTEND CONFERENCE

(a) The Title IV-D agency shall notify all parties entitled to notice of the negotiation conference of the date, time, and place of the conference not later than the 10th day before the date of the conference.

(b) If a party fails to attend the scheduled conference, the agency may proceed with the review and file a child support review order according to the information available to the agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.410 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.011. RESCHEDULING NEGOTIATION CONFERENCE; NOTICE REQUIRED

(a) The Title IV-D agency may reschedule or adjourn a negotiation conference on the request of any party.

(b) The Title IV-D agency shall give all parties notice of a rescheduled conference not later than the third day before the date of the rescheduled conference.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.411 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.012. INFORMATION REQUIRED TO BE PROVIDED AT NEGOTIATION CONFERENCE

At the beginning of the negotiation conference, the child support review officer shall review with the parties participating in the conference information provided in the notice of child support review and inform the parties that:

(1) the purpose of the negotiation conference is to provide an opportunity to reach an agreement on a child support order;

(2) if the parties reach an agreement, the review officer will prepare an agreed review order to be effective immediately on being confirmed by the court, as provided by Section 233.024;

(3) a party does not have to sign a review order prepared by the child support review officer but that the Title IV-D agency may file a review order without the agreement of the parties;

(4) the parties may sign a waiver of the right to service of process;

(5) a party may file a request for a court hearing on a nonagreed order not later than the 20th day after the date a copy of the petition for confirmation of the order is delivered to the party; and

(6) a party may file a motion for a new trial not later than the 30th day after an order is confirmed by the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.412 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 18, eff. September 1, 2011.

Sec. 233.013. DETERMINING SUPPORT AMOUNT; MODIFICATION

(a) The Title IV-D agency may use any information obtained by the agency from the parties or any other source and shall apply the child support guidelines provided by this code to determine the appropriate amount of child support. In determining the appropriate amount of child support, the agency may consider evidence of the factors a court is required to consider under Section 154.123(b), and, if the agency deviates from the guidelines in determining the amount of monthly child support, with or without the agreement of the parties, the child support review order must include the findings required to be made by a court under Section 154.130(b).

(b) If grounds exist for modification of a child support order under Subchapter E, Chapter 156, the Title IV-D agency may file an appropriate child support review order, including an order that has the

effect of modifying an existing court or administrative order for child support without the necessity of filing a motion to modify.

(c) Notwithstanding Subsection (b), the Title IV-D agency may, at any time and without a showing of material and substantial change in the circumstances of the parties, file a child support review order that has the effect of modifying an existing order for child support to provide medical support or dental support for a child if the existing order does not provide health care coverage for the child as required under Section 154.182 or dental care coverage for the child as required under Section 154.1825.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.413 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 19, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 12, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 963 (S.B. 1727), Sec. 5, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 51, eff. September 1, 2018.

Sec. 233.014. RECORD OF PROCEEDINGS

(a) For the purposes of this chapter, documentary evidence relied on by the child support review officer, including an affidavit of a party, together with the child support review order is a sufficient record of the proceedings.

(b) The Title IV-D agency is not required to make any other record or transcript of the negotiation conference.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.414 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.015. ISSUANCE OF CHILD SUPPORT REVIEW ORDER OR FINDING THAT NO ORDER SHOULD BE ISSUED; EFFECT

(a) If a negotiation conference does not result in agreement by all parties to the child support review order, the Title IV-D agency shall render a final decision in the form of a child support review order or a determination that the agency should not issue a child support review order not later than the fifth day after the date of the negotiation conference.

(b) If the Title IV-D agency determines that the agency should not issue a child support order, the agency shall immediately provide each party with notice of the determination by personal delivery or by first class mail.

(c) A determination that a child support order should not be issued must include a statement of the reasons that an order is not being issued and a statement that the agency's determination does not affect the right of the Title IV-D agency or a party to request any other remedy provided by law.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.415 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.016. VACATING CHILD SUPPORT REVIEW ORDER

(a) The Title IV-D agency may vacate a child support review order at any time before the order is filed with the court.

(b) A new negotiation conference, with notice to all parties, may be scheduled or the Title IV-D agency may make a determination that a child support review order should not be issued and give notice of that determination as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.416 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.017. CONTENTS OF CHILD SUPPORT REVIEW ORDER

(a) An order issued under this chapter must be reviewed and signed by an attorney of the Title IV-D agency and must contain all provisions that are appropriate for an order under this title, including current child support, medical support, dental support, a determination of any arrearages or retroactive support, and, if not otherwise ordered, income withholding.

(b) A child support review order providing for the enforcement of an order may not contain a provision that imposes incarceration or a fine or contains a finding of contempt.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 508, Sec. 25, eff. September 1, 2011.

(d) A child support review order that is not agreed to by all the parties may specify and reserve for the court at the confirmation hearing unresolved issues relating to conservatorship or possession of a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.417 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 25, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 52, eff. September 1, 2018.

Sec. 233.018. ADDITIONAL CONTENTS OF AGREED CHILD SUPPORT REVIEW ORDER

(a) If a negotiation conference results in an agreement of the parties, each party must sign the child support review order and the order must contain as to each party:

(1) a waiver by the party of the right to service of process and a court hearing;

(2) the mailing address of the party; and

(3) the following statement printed on the order in boldfaced type, in capital letters, or underlined:

"I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THIS CHILD SUPPORT REVIEW ORDER. I UNDERSTAND THAT IF I SIGN THIS ORDER, IT WILL BE CONFIRMED BY THE COURT WITHOUT FURTHER NOTICE TO ME. I KNOW THAT I HAVE A RIGHT TO REQUEST THAT A COURT RECONSIDER THE ORDER BY FILING A MOTION FOR A NEW TRIAL AT ANY TIME BEFORE THE 30TH DAY AFTER THE DATE OF THE CONFIRMATION OF THE ORDER BY THE COURT. I KNOW THAT IF I DO NOT OBEY THE TERMS OF THIS ORDER I MAY BE HELD IN CONTEMPT OF COURT."

(b) If a negotiation conference results in an agreement on some but not all issues in the case, the parties may sign a waiver of service along with an agreement to appear in court at a specified date and time for a determination by the court of all unresolved issues. Notice of the hearing is not required.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.418 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 67, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 17, eff. Sept. 1, 2003.

Sec. 233.019. FILING OF AGREED REVIEW ORDER

(a) The Title IV-D agency shall file an agreed child support review order and a waiver of service signed by the parties with the clerk of the court having continuing jurisdiction of the child who is the subject of the order.

(b) If there is not a court of continuing jurisdiction, the Title IV-D agency shall file the agreed review order with the clerk of a court having jurisdiction under this title.

(c) If applicable, an acknowledgment of paternity or a written report of a parentage testing expert and any documentary evidence relied upon by the agency shall be filed with the agreed review order as an exhibit to the order.

(d) A child support order issued by a tribunal of another state and filed with an agreed review order as an exhibit to the agreed review order shall be treated as a confirmed order without the necessity of registration under Subchapter G, Chapter 159.

(e) If a party timely files a motion for a new trial for reconsideration of an agreed review order and the court grants the motion, the agreed review order filed with the clerk constitutes a sufficient pleading by the Title IV-D agency for relief on any issue addressed in the order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.419 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 66, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 57, eff. September 1, 2007. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 13, eff. September 1, 2013.

Sec. 233.020. CONTENTS OF PETITION FOR CONFIRMATION OF NONAGREED ORDER

(a) A petition for confirmation of a child support review order not agreed to by the parties:

(1) must include the final review order as an attachment to the petition; and

(2) may include a waiver of service executed under Section 233.018(b) and an agreement to appear in court for a hearing.

(b) Documentary evidence relied on by the Title IV-D agency, including, if applicable, an acknowledgment of paternity or a written report of a parentage testing expert, shall be filed with the clerk as exhibits to the petition, but are not required to be served on the parties. The petition must identify the exhibits that are filed with the clerk.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.420 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 67, eff. Sept. 1, 1999.

Sec. 233.021. DUTIES OF CLERK OF COURT

(a) On the filing of an agreed child support review order or of a petition for confirmation of a nonagreed order issued by the Title IV-D agency, the clerk of court shall endorse on the order or petition the date and time the order or petition is filed.

(b) In an original action, the clerk shall endorse the appropriate court and cause number on the agreed review order or on the petition for confirmation of a nonagreed order.

(c) The clerk shall deliver by personal service a copy of the petition for confirmation of a nonagreed review order and a copy of the order, to each party entitled to service who has not waived service.

(d) A clerk of a district court is entitled to collect in a child support review case the fees authorized in a Title IV-D case by Chapter 231.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.421 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.022. FORM TO REQUEST A COURT HEARING ON NONAGREED ORDER

(a) A court shall consider any responsive pleading that is intended as an objection to confirmation of a child support review order not agreed to by the parties, including a general denial, as a request for a court hearing.

(b) The Title IV-D agency shall:

(1) make available to each clerk of court copies of the form to request a court hearing on a nonagreed review order; and

(2) provide the form to request a court hearing to a party to the child support review proceeding on request of the party.

(c) The clerk shall furnish the form to a party to the child support review proceeding on the request of the party.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.422 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.023. TIME TO REQUEST A COURT HEARING

A party may file a request for a court hearing not later than the 20th day after the date the petition for confirmation of a nonagreed child support review order is delivered to the party.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.423 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.024. CONFIRMATION OF AGREED ORDER

(a) On the filing of an agreed child support review order signed by all parties, together with waiver of service, the court shall sign the order not later than the third day after the filing of the order. On expiration of the third day after the filing of the order, the order is considered confirmed by the court by operation of law, regardless of whether the court has signed the order. The court may sign the order before filing the order, but the signed order shall immediately be filed.

(b) On confirmation by the court, the Title IV-D agency shall immediately deliver to each party a copy of the signed agreed review order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.424 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1023, Sec. 68, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 610, Sec. 18, eff. Sept. 1, 2003; Acts 2017, 85th Leg., R.S., Ch. 699 (H.B. 2048), Sec. 3, eff. Sept. 1, 2017.

Sec. 233.025. EFFECT OF REQUEST FOR HEARING ON NONAGREED ORDER; PLEADING

(a) A request for hearing or an order setting a hearing on confirmation of a nonagreed child support review order stays confirmation of the order pending the hearing.

(b) At a hearing on confirmation, any issues in dispute shall be heard in a trial de novo.

(c) The petition for confirmation and the child support review order constitute a sufficient pleading by the Title IV-D agency for relief on any issue addressed in the petition and order.

(d) The request for hearing may limit the scope of the de novo hearing by specifying the issues that are in dispute.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.425 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.026. TIME FOR COURT HEARING

(a) When a timely request for a court hearing has been filed as provided by Section 233.023, the court shall hold a hearing on the confirmation of a child support review order that has not been agreed to by the parties not later than the 30th day after the date the request was filed.

(b) A court may not hold a hearing on the confirmation of a nonagreed child support review order if a party does not timely request a hearing as provided by Section 233.023.

(c) If the court resets the time of the hearing, the reset hearing shall be held not later than the 30th day after the date set for the initial hearing.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.426 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 610, Sec. 19, eff. Sept. 1, 2003.

Sec. 233.027. NONAGREED ORDER AFTER HEARING

(a) After the hearing on the confirmation of a nonagreed child support review order, the court shall:

(1) if the court finds that the nonagreed order should be confirmed, immediately sign the nonagreed order and enter the order as a final order of the court;

(2) if the court finds that the relief granted in the nonagreed child support review order is inappropriate, sign an appropriate order at the conclusion of the hearing or as soon after the conclusion of the hearing as is practical and enter the order as an order of the court; or

(3) if the court finds that all relief should be denied, enter an order that denies relief and includes specific findings explaining the reasons that relief is denied.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 742, Sec. 18, eff. September 1, 2013.

(c) If the party who requested the hearing fails to appear at the hearing, the court shall sign the nonagreed order and enter the order as an order of the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.427 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 610, Sec. 20, eff. Sept. 1, 2003. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 14, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 15, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 18, eff. September 1, 2013.

Sec. 233.0271. CONFIRMATION OF NONAGREED ORDER WITHOUT HEARING

(a) If a request for hearing has not been timely received, the court shall confirm and sign a nonagreed child support review order not later than the 30th day after the date the petition for confirmation was delivered to the last party entitled to service.

(b) The Title IV-D agency shall immediately deliver a copy of the confirmed nonagreed review order to each party, together with notice of right to file a motion for a new trial not later than the 30th day after the date the order was confirmed by the court.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

Sec. 233.028. SPECIAL CHILD SUPPORT REVIEW PROCEDURES RELATING TO ESTABLISHMENT OF PARENTAGE

(a) If the parentage of a child has not been established, the notice of child support review delivered to the parties must include an allegation that the recipient is a biological parent of the child. The notice shall inform the parties that:

(1) not later than the 15th day after the date of delivery of the notice, the alleged parent of the child shall either sign a statement of paternity or an acknowledgment of paternity or deny in writing that the alleged parent is the biological parent of the child;

(2) either party may request that scientifically accepted parentage testing be conducted to assist in determining the identities of the child's parents;

(3) if the alleged parent timely denies parentage of the child, the Title IV-D agency shall order parentage testing; and

(4) if the alleged parent does not deny parentage of the child, the Title IV-D agency may conduct a negotiation conference.

(b) If all parties agree to the child's parentage, the agency may file an agreed child support review order as provided by this chapter.

(c) If a party denies parentage of a child whose parentage has not previously been acknowledged or adjudicated, the Title IV-D agency shall order parentage testing and give each party notice of the time and place of testing. If either party fails or refuses to participate in administrative parentage testing, the Title IV-D agency may file a child support review order resolving the question of parentage against that party. The court shall confirm the child support review order as a temporary or final order of the court only after an opportunity for parentage testing has been provided.

(d) If genetic testing identifies the alleged parent as the parent of the child and the results of a verified written report of a genetic testing expert meet the requirements of Chapter 160 for issuing a temporary order, the Title IV-D agency may conduct a negotiation conference to resolve any issues of support and file with the court a child support review order.

(e) If the results of parentage testing exclude an alleged parent from being the biological parent of the child, the Title IV-D agency shall issue and provide to each party a child support review order that declares that the excluded person is not a parent of the child.

(f) Any party may file a petition for confirmation of a child support review order issued under this section.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.428 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 821, Sec. 2.17, eff. June 14, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 963 (S.B. 1727), Sec. 6, eff. September 1, 2015.

Sec. 233.029. ADMINISTRATIVE PROCEDURE LAW NOT APPLICABLE

The child support review process under this chapter is not governed by Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, Sec. 2.04, eff. Sept. 1, 1995. Redesignated from Family Code Sec. 231.429 and amended by Acts 1997 75th Leg., ch. 911, Sec. 80, eff. Sept. 1, 1997.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. UNIFIED STATE CASE REGISTRY AND DISBURSEMENT UNIT

Sec. 234.001. ESTABLISHMENT AND OPERATION OF STATE CASE REGISTRY AND STATE DISBURSEMENT UNIT

(a) The Title IV-D agency shall establish and operate a state case registry and state disbursement unit meeting the requirements of 42 U.S.C. Sections 654a(e) and 654b and this subchapter.

(b) The state case registry shall maintain records of child support orders in Title IV-D cases and in other cases in which a child support order has been established or modified in this state on or after October 1, 1998.

(c) The state disbursement unit shall:

(1) receive, maintain, and furnish records of child support payments in Title IV-D cases and other cases as authorized by law;

(2) forward child support payments as authorized by law;

(3) maintain records of child support payments made through the state disbursement unit; and

(4) make available to a local registry each day in a manner determined by the Title IV-D agency the following information:

(A) the cause number of the suit under which withholding is required;

(B) the payor's name and social security number;

(C) the payee's name and, if available, social security number;

(D) the date the disbursement unit received the payment;

(E) the amount of the payment; and

(F) the instrument identification information.

(d) A certified child support payment record produced by the state disbursement unit is admissible as evidence of the truth of the information contained in the record and does not require further authentication or verification.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 68, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 69, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 58, eff. September 1, 2007.

Sec. 234.002. INTEGRATED SYSTEM FOR CHILD SUPPORT, MEDICAL SUPPORT, AND DENTAL SUPPORT ENFORCEMENT

The statewide integrated system for child support, medical support, and dental support enforcement under Chapter 231 shall be part of the state case registry and state disbursement unit authorized by this subchapter.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 68, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 53, eff. September 1, 2018.

Sec. 234.004. CONTRACTS AND COOPERATIVE AGREEMENTS

(a) The Title IV-D agency may enter into contracts and cooperative agreements as necessary to establish and operate the state case registry and state disbursement unit authorized under this subchapter.

(b) To the extent funds are available for this purpose, the Title IV-D agency may enter into contracts or cooperative agreements to process through the state disbursement unit child support collections in cases not otherwise eligible under 42 U.S.C. Section 654b.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 94, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 70, eff. Sept. 1, 2001.

Sec. 234.006. RULEMAKING

The Title IV-D agency may adopt rules in compliance with federal law for the operation of the state case registry and the state disbursement unit.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 68, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 71, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 59, eff. September 1, 2007.

Sec. 234.007. NOTICE OF PLACE OF PAYMENT

(a) A court that orders income to be withheld for child support shall order that all income ordered withheld for child support shall be paid to the state disbursement unit.

(b) In order to redirect payments to the state disbursement unit, the Title IV-D agency shall issue a notice of place of payment informing the obligor, obligee, and employer that income withheld for child support is to be paid to the state disbursement unit and may not be remitted to a local registry, the obligee, or any other person or agency. If withheld support has been paid to a local registry, the Title IV-D agency shall send the notice to the registry to redirect any payments to the state disbursement unit.

(c) A copy of the notice under Subsection (b) shall be filed with the court of continuing jurisdiction.

(d) The notice under Subsection (b) must include:

(1) the name of the child for whom support is ordered and of the person to whom support is ordered by the court to be paid;

(2) the style and cause number of the case in which support is ordered; and

(3) instructions for the payment of ordered support to the state disbursement unit.

(e) On receipt of a copy of the notice under Subsection (b), the clerk of the court shall file the notice in the appropriate case file.

(f) The notice under Subsection (b) may be used by the Title IV-D agency to redirect child support payments from the state disbursement unit of this state to the state disbursement unit of another state.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 68, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1247, Sec. 45, eff. Sept. 1, 2003. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 16, eff. September 1, 2013.

Sec. 234.008. DEPOSIT, DISTRIBUTION, AND ISSUANCE OF PAYMENTS

(a) Not later than the second business day after the date the state disbursement unit receives a child support payment, the state disbursement unit shall distribute the payment to the Title IV-D agency or the obligee.

(b) The state disbursement unit shall deposit daily all child support payments in a trust fund with the state comptroller. Subject to the agreement of the comptroller, the state disbursement unit may issue checks from the trust fund.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 972, Sec. 65(5), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 972, Sec. 65(5), eff. September 1, 2007.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 972, Sec. 65(5), eff. September 1, 2007.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 68, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1262, Sec. 4, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 1232 (H.B. 1238), Sec. 1, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 60, eff. September 1, 2007. Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 65(5), eff. September 1, 2007.

Sec. 234.009. OFFICIAL CHILD SUPPORT PAYMENT RECORD

(a) The record of child support payments maintained by a local registry is the official record of a payment received directly by the local registry.

(b) The record of child support payments maintained by the state disbursement unit is the official record of a payment received directly by the unit.

(c) After the date child support payments formerly received by a local registry are redirected to the state disbursement unit, a local registry may accept a record of payments furnished by the state disbursement unit and may add the payments to the record of payments maintained by the local registry so that a complete payment record is available for use by the court.

(d) If the local registry does not add payments received by the state disbursement unit to the record maintained by the registry as provided by Subsection (c), the official record of child support payments consists of the record maintained by the local registry for payments received directly by the registry and the record maintained by the state disbursement unit for payments received directly by the unit.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 68, eff. Sept. 1, 1999.

ANNOTATIONS

Ochsner v. Ochsner, 517 S.W.3d 717 (Tex. 2016). In the context of an enforcement proceeding, when confirming the amount of the child support arrearages, the trial court may consider evidence of direct payments made in contradiction with the terms of an underlying order that required payment through the state disbursement unit.

Sec. 234.0091. ADMINISTRATIVE REVIEW OF CHILD SUPPORT PAYMENT RECORD

(a) On request, the state disbursement unit shall provide to an obligor or obligee a copy of the record of child support payments maintained by the unit. The record must include the amounts and dates of all payments received from or on behalf of the obligor and disbursed to the obligee.

(b) An obligor or obligee may request that the Title IV-D agency investigate an alleged discrepancy between the child support payment record provided by the state disbursement unit under Subsection (a) and the payment records maintained by the obligor or obligee. The obligor or obligee making

the request must provide to the Title IV-D agency documentation of the alleged discrepancy, including a canceled check or other evidence of a payment or disbursement at issue.

(c) The Title IV-D agency shall respond to a request under Subsection (b) not later than the 20th day after the date the agency receives the request. If, after an investigation, the agency determines that the child support payment record maintained by the state disbursement unit should be amended, the state disbursement unit shall immediately make the required amendment to the record and notify the obligor or obligee who made the request under Subsection (b) of that amendment.

Added by Acts 2003, 78th Leg., ch. 1085, Sec. 1, eff. June 20, 2003.

Sec. 234.010. DIRECT DEPOSIT AND ELECTRONIC BENEFITS TRANSFER OF CHILD SUPPORT PAYMENTS

(a) The state disbursement unit authorized under this chapter may make a direct deposit of a child support payment to an obligee by electronic funds transfer into an account with a financial institution maintained by the obligee. It is the responsibility of the obligee to notify the state disbursement unit of:

(1) the existence of an account;

(2) the appropriate routing information for direct deposit by electronic funds transfer into an account; and

(3) any modification to account information previously provided to the state disbursement unit, including information that an account has been closed.

(b) Except as provided by Subsection (d), the state disbursement unit shall deposit a child support payment by electronic funds transfer into a debit card account established for the obligee by the Title IV-D agency if the obligee:

(1) does not maintain an account with a financial institution;

(2) fails to notify the state disbursement unit of the existence of an account maintained with a financial institution; or

(3) closes an account maintained with a financial institution previously used to accept direct deposit of a child support payment without establishing a new account and notifying the state disbursement unit of the new account in accordance with Subsection (a).

(c) The Title IV-D agency shall:

(1) issue a debit card to each obligee for whom a debit card account is established under Subsection (b); and

(2) provide the obligee with instructions for activating and using the debit card.

(c–1) Chapter 604, Business & Commerce Code, does not apply to a debit card issued under Subsection (c).

(d) An obligee may decline in writing to receive child support payments by electronic funds transfer into an account with a financial institution or a debit card account and request that payments be provided by paper warrants if the obligee alleges that receiving payments by electronic funds transfer would impose a substantial hardship.

(e) A child support payment disbursed by the state disbursement unit by electronic funds transfer into an account with a financial institution maintained by the obligee or into a debit card account established for the obligee under Subsection (b) is solely the property of the obligee.

Added by Acts 1999, 76th Leg., ch. 1072, Sec. 6, Sept. 1, 1999. Renumbered from Sec. 234.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(33), eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 551 (S.B. 1777), Sec. 1, eff. June 19, 2009. Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 30, eff. June 19, 2009.

Sec. 234.012. RELEASE OF INFORMATION FROM STATE CASE REGISTRY

Unless prohibited by a court in accordance with Section 105.006(c), the state case registry shall, on request and to the extent permitted by federal law, provide the information required under Sections 105.006 and 105.008 in any case included in the registry under Section 234.001(b) to:

(1) any party to the proceeding;

(2) an amicus attorney;

(3) an attorney ad litem;

(4) a friend of the court;

(5) a guardian ad litem;

(6) a domestic relations office;

(7) a prosecuting attorney or juvenile court acting in a proceeding under Title 3; or

(8) a governmental entity or court acting in a proceeding under Chapter 262.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 61, eff. September 1, 2007.

SUBCHAPTER B. STATE DIRECTORY OF NEW HIRES

Sec. 234.101. DEFINITIONS

In this subchapter:

(1) "Employee" means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986 (26 U.S.C. Section 3401(c)) or an independent contractor as defined by the Internal Revenue Service. The term does not include an employee of a state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting employee information under this subchapter could endanger the safety of the employee or compromise an ongoing investigation or intelligence activity.

(2) "Employer" has the meaning given that term by Section 3401(d) of the Internal Revenue Code of 1986 (26 U.S.C. Section 3401(d)) and includes a governmental entity and a labor organization, as that term is identified in Section 2(5) of the National Labor Relations Act (29 U.S.C. Section 152(5)), including an entity, also known as a "hiring hall," used by the labor organization and an employer to carry out requirements of an agreement between the organization and an employer described in Section 8(f)(3) of that Act (29 U.S.C. Section 158(f)(3)).

(3) "Newly hired employee" means an employee who:

(A) has not been previously employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 94, eff. Sept. 1, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 742 (S.B. 355), Sec. 17, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 963 (S.B. 1727), Sec. 7, eff. September 1, 2015.

Sec. 234.102. Operation of New Hire Directory

In cooperation with the Texas Workforce Commission, the Title IV-D agency shall develop and operate a state directory to which employers in the state shall report each newly hired or rehired employee in accordance with the requirements of 42 U.S.C. Section 653a.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 178, Sec. 12, eff. Aug. 30, 1999.

Sec. 234.103. Contracts and Cooperative Agreements

The Title IV-D agency may enter into cooperative agreements and contracts as necessary to create and operate the directory authorized under this subchapter.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 178, Sec. 13, eff. Aug. 30, 1999.

Sec. 234.104. Procedures

The Title IV-D agency by rule shall establish procedures for reporting employee information and for operating a state directory of new hires meeting the requirements of federal law.

Added by Acts 1997, 75th Leg., ch. 911, Sec. 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 178, Sec. 14, eff. Aug. 30, 1999.

Sec. 234.105. Civil Penalty

(a) In addition to any other remedy provided by law, an employer who knowingly violates a procedure adopted under Section 234.104 for reporting employee information may be liable for a civil penalty as permitted by Section 453A(d) of the federal Social Security Act (42 U.S.C. Section 653a).

(b) The amount of the civil penalty may not exceed:

(1) $25 for each occurrence in which an employer fails to report an employee; or

(2) $500 for each occurrence in which the conduct described by Subdivision (1) is the result of a conspiracy between the employer and an employee to not supply a required report or to submit a false or incomplete report.

(c) The attorney general may sue to collect the civil penalty. A penalty collected under this section shall be deposited in a special fund in the state treasury.

Added by Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 62, eff. September 1, 2007.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 261.001. DEFINITIONS

In this chapter:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code;

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or

(M) forcing or coercing a child to enter into a marriage.

(2) "Department" means the Department of Family and Protective Services.

(3) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(4) "Neglect":

(A) includes:

(i) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii) the following acts or omissions by a person:

(a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(b) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(d) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child;

(iii) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(iv) a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(i) the child has a severe emotional disturbance;

(ii) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(iii) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Subparagraph (ii).

(5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

(A) a parent, guardian, managing or possessory conservator, or foster parent of the child;

(B) a member of the child's family or household as defined by Chapter 71;

(C) a person with whom the child's parent cohabits;

(D) school personnel or a volunteer at the child's school;

(E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides; or

(F) an employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42, Human Resources Code.

(6) "Report" means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.

(7) Repealed by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 36(1), eff. September 1, 2017.

(8) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 1.203(4), eff. April 2, 2015.

(9) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 86, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 63, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(26), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 59, Sec. 1, eff. Sept. 1, 2001. Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.11, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.32, eff. September 1, 2007. Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 4.03, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 1142 (S.B. 44), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.120, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.203(4), eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 432 (S.B. 1889), Sec. 1, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1273 (S.B. 825), Sec. 4, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 2, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 7, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 36(1), eff. Sept. 1, 2017.

ANNOTATIONS

In re Doe 3, 19 S.W.3d 300 (Tex. 2000) (per curiam). In several concurring and dissenting opinions, the Justices of the Texas Supreme Court discuss the extent to which "abuse," as defined in subsection 261.001(1)(A), casts light on the meaning of "abuse" as used in the judicial by-pass statute, Family Code subsection 33.003(i).

In re L.S., No. 09-17-00065-CV, 2017 WL 3081120 (Tex. App.—Beaumont July 20, 2017, no pet.) (mem. op.). Signs of withdrawal do not need to be proven to support termination.

In re C.B., 376 S.W.3d 244 (Tex. App.—Amarillo 2012, no pet.). The definitions in subsections 261.001(1) and (4) are not exhaustive and can be used in the application of the same terms under Family Code chapter 161.

In re M.R., 243 S.W.3d 807 (Tex. App.—Fort Worth 2007, no pet.). Subsections 261.001(1)(A), (B), and (I) define "abuse" as that term is used in Family Code section 104.006, which allows admission of a child's hearsay outcry statement of abuse.

Texas Department of Family & Protective Services v. Barlow, No. 03-05-00469-CV, 2007 WL 1853734 (Tex. App.—Austin June 28, 2007, pet. denied) (mem. op.). This case discusses what constitutes "substantial" risk and "immediate harm" under subsection 261.001(4).

Texas Department of Family & Protective Services v. Atwood, 176 S.W.3d 522 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). The TDFPS found "reason to believe," under subsection 261.001(4)(B)(i), that foster parents were neglectful in their supervision of a foster child in their care.

Department of Protective & Regulatory Services v. Schutz, 101 S.W.3d 512 (Tex. App.—Houston [1st Dist.] 2002, no pet.). The court determined that a foster parent falls within the definition of a "person responsible for the child's care, custody, or welfare" under subsection 261.001(5)(A).

Sec. 261.002. CENTRAL REGISTRY

(a) The department shall establish and maintain a central registry of the names of individuals found by the department to have abused or neglected a child.

(b) The executive commissioner shall adopt rules necessary to carry out this section. The rules shall:

(1) prohibit the department from making a finding of abuse or neglect against a person in a case in which the department is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child;

(2) establish guidelines for reviewing the records in the registry and removing those records in which the department was named managing conservator of a child who has a severe emotional disturbance only because the child's family was unable to obtain mental health services for the child;

(3) require the department to remove a person's name from the central registry maintained under this section not later than the 10th business day after the date the department receives notice that a finding of abuse and neglect against the person is overturned in:

(A) an administrative review or an appeal of the review conducted under Section 261.309(c);

(B) a review or an appeal of the review conducted by the office of consumer affairs of the department; or

(C) a hearing or an appeal conducted by the State Office of Administrative Hearings; and

(4) require the department to update any relevant department files to reflect an overturned finding of abuse or neglect against a person not later than the 10th business day after the date the finding is overturned in a review, hearing, or appeal described by Subdivision (3).

(c) The department may enter into agreements with other states to allow for the exchange of reports of child abuse and neglect in other states' central registry systems. The department shall use information obtained under this subsection in performing the background checks required under Section 42.056, Human Resources Code. The department shall cooperate with federal agencies and shall provide information and reports of child abuse and neglect to the appropriate federal agency that maintains the national registry for child abuse and neglect, if a national registry exists.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.12, eff. September 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.121, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 432 (S.B. 1889), Sec. 2, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 360 (H.B. 2849), Sec. 1, eff. Sept. 1, 2017.

ANNOTATIONS

L.C. v. Texas Department of Family & Protective Services, No. 03-07-00055-CV, 2009 WL 3806158 (Tex. App.—Austin Nov. 13, 2009, no pet.) (mem. op.). Central registries keeping data on reported child abuse and neglect cases are constitutional.

RESOURCES

40 Tex. Admin. Code § 700.104 (general description of the Child Abuse and Neglect Central Registry).

40 Tex. Admin. Code § 730.1702 (information on appealing TDFPS findings under this section to the State Office of Hearing Examiners).

40 Tex. Admin. Code § 700.523 (regarding an alleged perpetrator requesting removal of his or her name from the central registry based on a finding that rules out all allegations).

Sec. 261.003. APPLICATION TO STUDENTS IN SCHOOL FOR DEAF OR SCHOOL FOR BLIND AND VISUALLY IMPAIRED

This chapter applies to the investigation of a report of abuse or neglect of a student, without regard to the age of the student, in the Texas School for the Deaf or the Texas School for the Blind and Visually Impaired.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 261.004. TRACKING OF RECURRENCE OF CHILD ABUSE OR NEGLECT REPORTS

(a) The department shall collect and monitor data regarding repeated reports of abuse or neglect:

(1) involving the same child, including reports of abuse or neglect of the child made while the child resided in other households and reports of abuse or neglect of the child by different alleged perpetrators made while the child resided in the same household; or

(2) by the same alleged perpetrator.

(b) In monitoring reports of abuse or neglect under Subsection (a), the department shall group together separate reports involving different children residing in the same household.

(c) The department shall consider any report collected under Subsection (a) involving any child or adult who is a part of a child's household when making case priority determinations or when conducting service or safety planning for the child or the child's family.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 8, eff. Sept. 1, 2017.

Sec. 261.005. REFERENCE TO EXECUTIVE COMMISSIONER OR COMMISSION

In this chapter:

(1) a reference to the executive commissioner or the executive commissioner of the Health and Human Services Commission means the commissioner of the department; and

(2) a reference to the Health and Human Services Commission means the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 10, eff. Sept. 1, 2017. Redesignated from Sec. 261.004 by Acts 2019, 86th Leg., H.B. 4170, Sec. 21.001(12), eff. Sept. 1, 2019.

SUBCHAPTER B. REPORT OF ABUSE OR NEGLECT; IMMUNITIES

Sec. 261.101. PERSONS REQUIRED TO REPORT; TIME TO REPORT

(a) A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

(b–1) In addition to the duty to make a report under Subsection (a) or (b), a person or professional shall make a report in the manner required by Subsection (a) or (b), as applicable, if the person or professional has cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of:

(1) another child; or

(2) an elderly person or person with a disability as defined by Section 48.002, Human Resources Code.

(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, an employee or member of a board that licenses or certifies a professional, and an employee of a clinic or health care facility that provides reproductive services.

(d) Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only:

(1) as provided by Section 261.201; or

(2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 87, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 162, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 575, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 65, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.29, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1150, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 21, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 5.003, eff. Sept. 1, 2001. Acts 2005, 79th Leg., Ch.

949 (H.B. 1575), Sec. 27, eff. September 1, 2005. Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 4, eff. June 14, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.122, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 3, eff. Sept. 1, 2017.

COMMENTS

Section 261.106 grants immunity for persons reporting abuse.

ANNOTATIONS

Perry v. S.N., 973 S.W.2d 301 (Tex. 1998). Violation of the child abuse reporting statute does not constitute negligence per se.

Bordelon v. State, ___ S.W.3d ___, No. 04-17-00093-CR, 2018 WL 3622065 (Tex. App.—San Antonio July 31, 2018, pet. ref'd). In a criminal case, the defendant's attorney had a duty to report abuse after learning of a new victim in her trial preparation.

Colt v. Hamner, No. 05-04-00294-CV, 2005 WL 834098 (Tex. App.—Dallas Apr. 12, 2005, no pet.) (mem. op.). This section does not create a private cause of action; rather, enforcement is within the sole purview of the prosecuting attorney.

Rodriguez v. State, 47 S.W.3d 86 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd). This section is not unconstitutionally vague even though the word "immediately" is not defined. The court found the section not unconstitutional as applied because the defendant never reported the abuse.

Sec. 261.102. MATTERS TO BE REPORTED

A report should reflect the reporter's belief that a child has been or may be abused or neglected or has died of abuse or neglect.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 88, eff. Sept. 1, 1995.

Sec. 261.103. REPORT MADE TO APPROPRIATE AGENCY

(a) Except as provided by Subsections (b) and (c) and Section 261.405, a report shall be made to:

(1) any local or state law enforcement agency;

(2) the department; or

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred.

(b) A report may be made to the Texas Juvenile Justice Department instead of the entities listed under Subsection (a) if the report is based on information provided by a child while under the supervision of the Texas Juvenile Justice Department concerning the child's alleged abuse of another child.

(c) Notwithstanding Subsection (a), a report, other than a report under Subsection (a)(3) or Section 261.405, must be made to the department if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 89, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1477, Sec. 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1297, Sec. 46, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 213 (H.B. 1970), Sec. 1, eff. September 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.123, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 80, eff. September 1, 2015.

Sec. 261.104. CONTENTS OF REPORT

The person making a report shall identify, if known:

(1) the name and address of the child;

(2) the name and address of the person responsible for the care, custody, or welfare of the child; and

(3) any other pertinent information concerning the alleged or suspected abuse or neglect.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 90, eff. Sept. 1, 1995.

Sec. 261.105. REFERRAL OF REPORT BY DEPARTMENT OR LAW ENFORCEMENT

(a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to the department.

(b) The department shall immediately notify the appropriate state or local law enforcement agency of any report it receives, other than a report from a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect.

(c) In addition to notifying a law enforcement agency, if the report relates to a child in a facility operated, licensed, certified, or registered by a state agency, the department shall refer the report to the agency for investigation.

(c–1) Notwithstanding Subsections (b) and (c), if a report under this section relates to a child with an intellectual disability receiving services in a state supported living center as defined by Section 531.002, Health and Safety Code, or the ICF-IID component of the Rio Grande State Center, the department shall proceed with the investigation of the report as provided by Section 261.404.

(d) If the department initiates an investigation and determines that the abuse or neglect does not involve a person responsible for the child's care, custody, or welfare, the department shall refer the report to a law enforcement agency for further investigation. If the department determines that the abuse or neglect involves an employee of a public **or private** elementary or secondary school, and that the child is a student at the school, the department shall orally notify the superintendent of the school district, **the director of the open-enrollment charter school, or the chief executive officer of the private school** in which the employee is employed about the investigation.

(e) In cooperation with the department, the Texas Juvenile Justice Department by rule shall adopt guidelines for identifying a report made to the Texas Juvenile Justice Department under Section 261.103(b) that is appropriate to refer to the department or a law enforcement agency for investigation. Guidelines adopted under this subsection must require the Texas Juvenile Justice Department to consider the severity and immediacy of the alleged abuse or neglect of the child victim.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 66, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1477, Sec. 25, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 374, Sec. 3, eff. June 18, 2003. Amended by: Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 4, eff. June 11, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.124, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 81, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1167 (S.B. 821), Sec. 4, eff. September 1, 2015. Acts 2019, 86th Leg., S.B. 1231, Sec. 1, eff. Sept. 1, 2019.

Sec. 261.1055. NOTIFICATION OF DISTRICT ATTORNEYS

(a) A district attorney may inform the department that the district attorney wishes to receive notification of some or all reports of suspected abuse or neglect of children who were in the county at the time the report was made or who were in the county at the time of the alleged abuse or neglect.

(b) If the district attorney makes the notification under this section, the department shall, on receipt of a report of suspected abuse or neglect, immediately notify the district attorney as requested and the department shall forward a copy of the reports to the district attorney on request.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 67, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.125, eff. April 2, 2015.

Sec. 261.106. IMMUNITIES

(a) A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) Immunity from civil and criminal liability extends to an authorized volunteer of the department or a law enforcement officer who participates at the request of the department in an investigation of alleged or suspected abuse or neglect or in an action arising from an investigation if the person was acting in good faith and in the scope of the person's responsibilities.

(c) A person who reports the person's own abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect is not immune from civil or criminal liability.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 91, eff. Sept. 1, 1995.

ANNOTATIONS

Thibodeau v. Lyles, 558 S.W.3d 166 (Tex. App.—Houston [14th Dist.] 2018, no pet.). This section does not deprive a court of subject matter jurisdiction.

In re Mayorga, 538 S.W.3d 174 (Tex. App.—El Paso 2017, no pet.) (orig. proceeding). This section does not provide immunity for violation of a possession order—it is not a defense to a contempt action.

In re L.M.M., No. 03-04-00452-CV, 2005 WL 2094758 (Tex. App.—Austin Aug. 31, 2005, no pet.) (mem. op.). Even though a mother and her parents alleged child abuse against a father, the mother and her parents were not immune from paying the father's attorney's fees under this section because the underlying suit was a modification of conservatorship, not a "child abuse case."

B.K. v. Cox, 116 S.W.3d 351 (Tex. App.—Houston [14th Dist.] 2003, no pet.). This section is in addition to common-law immunities, not exclusive of common-law immunities.

Chaney v. Corona, 103 S.W.3d 608 (Tex. App.—San Antonio 2003, pet. denied). The test for establishing "good faith" for purposes of this section is the same as that applied for purposes of establishing official immunity. To establish good faith, a party must show that a reasonably prudent person, under the same or similar circumstances, could have believed that reporting the abuse was justified based on the information he possessed.

Sec. 261.107. FALSE REPORT; CRIMINAL PENALTY; CIVIL PENALTY

(a) A person commits an offense if, with the intent to deceive, the person knowingly makes a report as provided in this chapter that is false. An offense under this subsection is a state jail felony unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a felony of the third degree.

(b) A finding by a court in a suit affecting the parent-child relationship that a report made under this chapter before or during the suit was false or lacking factual foundation may be grounds for the court to modify an order providing for possession of or access to the child who was the subject of the report by restricting further access to the child by the person who made the report.

(c) The appropriate county prosecuting attorney shall be responsible for the prosecution of an offense under this section.

(d) The court shall order a person who is convicted of an offense under Subsection (a) to pay any reasonable attorney's fees incurred by the person who was falsely accused of abuse or neglect in any proceeding relating to the false report.

(e) A person who engages in conduct described by Subsection (a) is liable to the state for a civil penalty of $1,000. The attorney general shall bring an action to recover a civil penalty authorized by this subsection.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 92, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 68; Acts 1999, 76th Leg., ch. 62, Sec. 6.30, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.13, eff. September 1, 2005. Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.14(a), eff. September 1, 2005.

ANNOTATIONS

Colt v. Hamner, No. 05-04-00294-CV, 2005 WL 834098 (Tex. App.—Dallas Apr. 12, 2005, no pet.) (mem. op.). This section does not create a private cause of action; rather, enforcement is within the sole purview of the prosecuting attorney.

Sec. 261.108. FRIVOLOUS CLAIMS AGAINST PERSON REPORTING

(a) In this section:

(1) "Claim" means an action or claim by a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, requesting recovery of damages.

(2) "Defendant" means a party against whom a claim is made.

(b) A court shall award a defendant reasonable attorney's fees and other expenses related to the defense of a claim filed against the defendant for damages or other relief arising from reporting or assisting in the investigation of a report under this chapter or participating in a judicial proceeding resulting from the report if:

(1) the court finds that the claim is frivolous, unreasonable, or without foundation because the defendant is immune from liability under Section 261.106; and

(2) the claim is dismissed or judgment is rendered for the defendant.

(c) To recover under this section, the defendant must, at any time after the filing of a claim, file a written motion stating that:

(1) the claim is frivolous, unreasonable, or without foundation because the defendant is immune from liability under Section 261.106; and

(2) the defendant requests the court to award reasonable attorney's fees and other expenses related to the defense of the claim.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 261.109. FAILURE TO REPORT; PENALTY

(a) A person commits an offense if the person is required to make a report under Section 261.101(a) and knowingly fails to make a report as provided in this chapter.

(a–1) A person who is a professional as defined by Section 261.101(b) commits an offense if the person is required to make a report under Section 261.101(b) and knowingly fails to make a report as provided in this chapter.

(b) An offense under Subsection (a) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the child was a person with an intellectual disability who resided in a state supported living center, the ICF-IID component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the child had suffered serious bodily injury as a result of the abuse or neglect.

(c) An offense under Subsection (a–1) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the actor intended to conceal the abuse or neglect.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 5, eff. June 11, 2009. Acts 2013, 83rd Leg., R.S., Ch. 290 (H.B. 1205), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.126, eff. April 2, 2015.

ANNOTATIONS

Perry v. S.N., 973 S.W.2d 301 (Tex. 1998). The failure to report child abuse is not negligence per se.

State v. Harrod, 81 S.W.3d 904 (Tex. App.—Dallas 2002, pet. ref'd). A mother was not immune from criminal prosecution for failure to immediately report the sexual abuse of her daughters.

Sec. 261.110. EMPLOYER RETALIATION PROHIBITED

(a) In this section:

(1) **"Adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect under Section 261.101.**

(2) **"Professional"** ~~, "professional"~~ has the meaning assigned by Section 261.101(b).

(b) An employer may not suspend or terminate the employment of, ~~or otherwise~~ discriminate **against, or take any other adverse employment action** against, a person who is a professional and who in good faith:

(1) reports child abuse or neglect to:

(A) the person's supervisor;

(B) an administrator of the facility where the person is employed;

(C) a state regulatory agency; or

(D) a law enforcement agency; or

(2) initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

(c) A person **may sue for injunctive relief, damages, or both if, in violation of this section, the person:**

(1) ~~whose employment~~ is suspended or terminated **from the person's employment;**

(2) ~~or who~~ is ~~otherwise~~ discriminated against**; or**

(3) suffers any other adverse employment action ~~in violation of this section may sue for injunctive relief, damages, or both~~.

(d) A plaintiff who prevails in a suit under this section may recover:

(1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(2) exemplary damages under Chapter 41, Civil Practice and Remedies Code, if the employer is a private employer;

(3) court costs; and

(4) reasonable attorney's fees.

(e) In addition to amounts recovered under Subsection (d), a plaintiff who prevails in a suit under this section is entitled to:

(1) reinstatement to the person's former position or a position that is comparable in terms of compensation, benefits, and other conditions of employment;

(2) reinstatement of any fringe benefits and seniority rights lost because of the suspension, termination, or discrimination; and

(3) compensation for wages lost during the period of suspension or termination.

(f) A public employee who alleges a violation of this section may sue the employing state or local governmental entity for the relief provided for by this section. Sovereign immunity is waived and abolished to the extent of liability created by this section. A person having a claim under this section may sue a governmental unit for damages allowed by this section.

(g) In a suit under this section against an employing state or local governmental entity, a plaintiff may not recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount that exceeds:

(1) $50,000, if the employing state or local governmental entity has fewer than 101 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(2) $100,000, if the employing state or local governmental entity has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(3) $200,000, if the employing state or local governmental entity has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year; and

(4) $250,000, if the employing state or local governmental entity has more than 500 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year.

(h) If more than one subdivision of Subsection (g) applies to an employing state or local governmental entity, the amount of monetary damages that may be recovered from the entity in a suit brought under this section is governed by the applicable provision that provides the highest damage award.

(i) A plaintiff suing under this section has the burden of proof, except that there is a rebuttable presumption that the plaintiff's employment was suspended or terminated or that the plaintiff was otherwise discriminated against for reporting abuse or neglect if the suspension, termination, or discrimination occurs before the 61st day after the date on which the person made a report in good faith.

(j) A suit under this section may be brought in a district or county court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(k) It is an affirmative defense to a suit under Subsection (b) that an employer would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee reported child abuse or neglect or initiated or cooperated with an investigation or proceeding relating to an allegation of child abuse or neglect.

(l) A public employee who has a cause of action under Chapter 554, Government Code, based on conduct described by Subsection (b) may not bring an action based on that conduct under this section.

(m) This section does not apply to a person who reports the person's own abuse or neglect of a child or who initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of the person's own abuse or neglect of a child.

Added by Acts 2001, 77th Leg., ch. 896, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2019, 86th Leg., H.B. 621, Sec. 1, eff. Sept. 1, 2019.

Section 2 of Acts 2019, 86th Leg., H.B. 621 states—

"This Act applies only to an adverse employment action taken by an employer against an employee that occurs on or after the effective date of this Act. An adverse employment action taken by an employer against an employee that occurs before that date is governed by the law in effect on the date the action occurred, and the former law is continued in effect for that purpose."

COMMENTS

Compare this section with the Texas Whistleblower Act, Tex. Gov't Code §§ 554.001–.010.

ANNOTATIONS

Texas Youth Commission v. Garza, No. 13-08-00527-CV, 2009 WL 1238582 (Tex. App.—Corpus Christi May 7, 2009, no pet.) (mem. op.). A trier of fact may decide whether allegations fall under this section or the Texas Whistleblower Act.

Ysleta Independent School District v. Griego, 170 S.W.3d 792 (Tex. App.—El Paso 2005, pet. denied). A plaintiff in a suit under this section must first exhaust his administrative remedies, if any. In this case, a counselor under contract with a school district must first exhaust administrative remedies in the Education Code before pursuing an action under the Family Code.

Sec. 261.111. REFUSAL OF PSYCHIATRIC OR PSYCHOLOGICAL TREATMENT OF CHILD

(a) In this section, "psychotropic medication" has the meaning assigned by Section 266.001.

(b) The refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic medication to the child, or to consent to any other psychiatric or psychological treatment of the child, does not by itself constitute neglect of the child unless the refusal to consent:

(1) presents a substantial risk of death, disfigurement, or bodily injury to the child; or

(2) has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Added by Acts 2003, 78th Leg., ch. 1008, Sec. 3, eff. June 20, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.127, eff. April 2, 2015.

SUBCHAPTER C. CONFIDENTIALITY AND PRIVILEGED COMMUNICATION

Sec. 261.201. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

(b) A court may order the disclosure of information that is confidential under this section if:

(1) a motion has been filed with the court requesting the release of the information;

(2) a notice of hearing has been served on the investigating agency and all other interested parties; and

(3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child.

(b–1) On a motion of one of the parties in a contested case before an administrative law judge relating to the license or certification of a professional, as defined by Section 261.101(b), or an educator, as defined by Section 5.001, Education Code, the administrative law judge may order the disclosure of information that is confidential under this section that relates to the matter before the administrative law judge after a hearing for which notice is provided as required by Subsection (b)(2) and making the review and determination required by Subsection (b)(3). Before the department may release information

under this subsection, the department must edit the information to protect the confidentiality of the identity of any person who makes a report of abuse or neglect.

(c) In addition to Subsection (b), a court, on its own motion, may order disclosure of information that is confidential under this section if:

(1) the order is rendered at a hearing for which all parties have been given notice;

(2) the court finds that disclosure of the information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child; and

(3) the order is reduced to writing or made on the record in open court.

(d) The adoptive parents of a child who was the subject of an investigation and an adult who was the subject of an investigation as a child are entitled to examine and make copies of any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child. The department may edit the documents to protect the identity of the biological parents and any other person whose identity is confidential, unless this information is already known to the adoptive parents or is readily available through other sources, including the court records of a suit to terminate the parent-child relationship under Chapter 161.

(e) Before placing a child who was the subject of an investigation, the department shall notify the prospective adoptive parents of their right to examine any report, record, working paper, or other information in the possession, custody, or control of the department that pertains to the history of the child.

(f) The department shall provide prospective adoptive parents an opportunity to examine information under this section as early as practicable before placing a child.

(f–1) The department shall provide to a relative or other individual with whom a child is placed any information the department considers necessary to ensure that the relative or other individual is prepared to meet the needs of the child. The information required by this subsection may include information related to any abuse or neglect suffered by the child.

(g) Notwithstanding Subsection (b), the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

(i) Notwithstanding Subsection (a), the Texas Juvenile Justice Department shall release a report of alleged or suspected abuse or neglect made under this chapter if:

(1) the report relates to a report of abuse or neglect involving a child committed to the Texas Juvenile Justice Department during the period that the child is committed to that department; and

(2) the Texas Juvenile Justice Department is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.

(j) The Texas Juvenile Justice Department shall edit any report disclosed under Subsection (i) to protect the identity of:

(1) a child who is the subject of the report of alleged or suspected abuse or neglect;

(2) the person who made the report; and

(3) any other person whose life or safety may be endangered by the disclosure.

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and

(3) the identity of the person who made the report.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 93, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 12, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 69, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 22, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 68, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.15, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 12, eff. June 8, 2007. Acts 2009, 81st Leg., R.S., Ch. 713 (H.B. 2876), Sec. 1, eff. June 19, 2009. Acts 2009, 81st Leg., R.S., Ch. 779 (S.B. 1050), Sec. 1, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. 1182), Sec. 13, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.128, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 82, eff. September 1, 2015.

ANNOTATIONS

Rodarte v. Texas Department of Family & Protective Services, No. 04-10-00880-CV, 2012 WL 2020989 (Tex. App.—San Antonio June 6, 2012, no pet.) (mem. op.). This section, which requires the TDFPS to provide information to a parent of a child who is the subject of reported abuse or neglect, overrides Government Code section 552.028, which states that a governmental body can refuse a request for information from an inmate.

In re Fulgium, 150 S.W.3d 252 (Tex. App.—Texarkana 2004, orig. proceeding). If a hearing determines that disclosure of the information requested under this section is essential to the administration of justice and there is no danger to the child or any other person, a court may order the disclosure of information at its discretion.

RESOURCES

The following statutes pertain to this section: Tex. Gov't Code § 552.028; Tex. Admin. Code §§ 700.203(a), 700.205(e).

Sec. 261.202. PRIVILEGED COMMUNICATION

In a proceeding regarding the abuse or neglect of a child, evidence may not be excluded on the ground of privileged communication except in the case of communications between an attorney and client.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re L.E.S., 471 S.W.3d 915 (Tex. App.—Texarkana 2015, no pet.). Admission of recorded jailhouse conversation was not precluded by the spousal communication privilege.

In re W.B.W., No. 11-11-00269-CV, 2012 WL 2856067 (Tex. App.—Eastland July 12, 2012, pet. denied) (mem. op.). Suit involving termination of parental rights is "a proceeding regarding the abuse or neglect of a child." Father could not invoke privilege to exclude his communications with clergyman.

Bordman v. State, 56 S.W.3d 63 (Tex. App.—Houston [1st Dist.] 2001, pet. ref'd). This section is an exception to Tex. R. Evid. 505 (privilege for communications to members of clergy), and it is applicable in criminal cases as well as civil cases.

Sec. 261.203. INFORMATION RELATING TO CHILD FATALITY

(a) Not later than the fifth day after the date the department receives a request for information about a child fatality with respect to which the department is conducting an investigation of alleged abuse or neglect, the department shall release:

(1) the age and sex of the child;

(2) the date of death;

(3) whether the state was the managing conservator of the child at the time of the child's death; and

(4) whether the child resided with the child's parent, managing conservator, guardian, or other person entitled to possession of the child at the time of the child's death.

(b) If, after a child abuse or neglect investigation described by Subsection (a) is completed, the department determines a child's death or a child's near fatality was caused by abuse or neglect, the department on request shall promptly release investigation information not prohibited from release under federal law, including the following information:

(1) the information described by Subsection (a), if not previously released to the person requesting the information;

(2) information on whether a child's death or near fatality:

(A) was determined by the department to be attributable to abuse or neglect; or

(B) resulted in a criminal investigation or the filing of criminal charges if known at the time the investigation is completed;

(3) for cases in which the child's death or near fatality occurred while the child was living with the child's parent, managing conservator, guardian, or other person entitled to possession of the child:

(A) a summary of any previous reports of abuse or neglect of the child or another child made while the child was living with that parent, managing conservator, guardian, or other person entitled to possession of the child;

(B) the disposition of any report under Paragraph (A);

(C) a description of any services, including family-based safety services, that were provided or offered by the department to the child or the child's family as a result of any report under Paragraph (A) and whether the services were accepted or declined; and

(D) the results of any risk or safety assessment completed by the department relating to the child; and

(4) for a case in which the child's death or near fatality occurred while the child was in substitute care with the department or with a residential child-care provider regulated under Chapter 42, Human Resources Code, the following information:

(A) the date the substitute care provider with whom the child was residing at the time of death or near fatality was licensed or verified;

(B) a summary of any previous reports of abuse or neglect investigated by the department relating to the substitute care provider, including the disposition of any investigation resulting from a report;

(C) any reported licensing violations, including notice of any action taken by the department regarding a violation; and

(D) records of any training completed by the substitute care provider while the child was placed with the provider.

(c) If the department is unable to release the information required by Subsection (b) before the 11th day after the date the department receives a request for the information or the date the investigation of the child fatality is completed, whichever is later, the department shall inform the person requesting the information of the date the department will release the information.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(7), eff. September 1, 2015.

(e) Before the department releases any information under Subsection (b), the department shall redact from the records any information the release of which would:

(1) identify:

(A) the individual who reported the abuse or neglect; or

(B) any other individual other than the deceased child or an alleged perpetrator of the abuse or neglect;

(2) jeopardize an ongoing criminal investigation or prosecution;

(3) endanger the life or safety of any individual; or

(4) violate other state or federal law.

(f) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 779 (S.B. 1050), Sec. 2, eff. September 1, 2009. Amended by: Acts 2015, 84th Leg., R.S., Ch. 253 (S.B. 949), Sec. 1, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(7), eff. September 1, 2015.

Sec. 261.204. ANNUAL CHILD FATALITY REPORT

(a) Not later than March 1 of each year, the department shall publish an aggregated report using information compiled from each child fatality investigation for which the department made a finding regarding abuse or neglect, including cases in which the department determined the fatality was not the result of abuse or neglect. The report must protect the identity of individuals involved and contain the following information:

(1) the age and sex of the child and the county in which the fatality occurred;

(2) whether the state was the managing conservator of the child or whether the child resided with the child's parent, managing conservator, guardian, or other person entitled to the possession of the child at the time of the fatality;

(3) the relationship to the child of the individual alleged to have abused or neglected the child, if any;

(4) the number of any department abuse or neglect investigations involving the child or the individual alleged to have abused or neglected the child during the two years preceding the date of the fatality and the results of the investigations;

(5) whether the department offered family-based safety services or conservatorship services to the child or family;

(6) the types of abuse and neglect alleged in the reported investigations, if any; and

(7) any trends identified in the investigations contained in the report.

(b) The report published under Subsection (a) must:

(1) accurately represent all abuse-related and neglect-related child fatalities in this state, including child fatalities investigated under Subchapter F, Chapter 264, and other child fatalities investigated by the department; and

(2) aggregate the fatalities by investigative findings and case disposition, including the following dispositions:

(A) abuse and neglect ruled out;

(B) unable to determine cause of death;

(C) reason to believe abuse or neglect occurred;

(D) reason to believe abuse or neglect contributed to child's death;

(E) unable to complete review; and

(F) administrative closure.

(c) The department may release additional information in the annual report if the release of the information is not prohibited by state or federal law.

(d) The department shall post the annual report on the department's Internet website and otherwise make the report available to the public.

(e) The executive commissioner of the Health and Human Services Commission may adopt rules to implement this section.

(f) At least once every 10 years, the department shall use the information reported under this section to provide guidance for possible department policy changes.

Added by Acts 2015, 84th Leg., R.S., Ch. 253 (S.B. 949), Sec. 2, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 1, eff. Sept. 1, 2017.

SUBCHAPTER D. INVESTIGATIONS

Sec. 261.301. INVESTIGATION OF REPORT

(a) With assistance from the appropriate state or local law enforcement agency as provided by this section, the department shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare. The investigation shall be conducted without regard to any pending suit affecting the parent-child relationship.

(b) A state agency shall investigate a report that alleges abuse, neglect, or exploitation occurred in a facility operated, licensed, certified, or registered by that agency as provided by Subchapter E. In conducting an investigation for a facility operated, licensed, certified, registered, or listed by the department, the department shall perform the investigation as provided by:

(1) Subchapter E; and

(2) the Human Resources Code.

(c) The department is not required to investigate a report that alleges child abuse, neglect, or exploitation by a person other than a person responsible for a child's care, custody, or welfare. The appropriate state or local law enforcement agency shall investigate that report if the agency determines an investigation should be conducted.

(d) The executive commissioner shall by rule assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child. The rules must require the department, subject to the availability of funds, to:

(1) immediately respond to a report of abuse and neglect that involves circumstances in which the death of the child or substantial bodily harm to the child would result unless the department immediately intervenes;

(2) respond within 24 hours to a report of abuse and neglect that is assigned the highest priority, other than a report described by Subdivision (1); and

(3) respond within 72 hours to a report of abuse and neglect that is assigned the second highest priority.

(e) As necessary to provide for the protection of the child, the department shall determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other children in the home;

(4) an evaluation of the parents or persons responsible for the care of the child;

(5) the adequacy of the home environment;

(6) the relationship of the child to the persons responsible for the care, custody, or welfare of the child; and

(7) all other pertinent data.

(f) An investigation of a report to the department that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child shall be conducted jointly by a peace officer, as defined by Article 2.12, Code of Criminal Procedure, from the appropriate local law enforcement agency and the department or the agency responsible for conducting an investigation under Subchapter E.

(g) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under this section does not constitute grounds to prevent or prohibit the department from performing its duties under this subtitle. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under this section.

(h) The department and the appropriate local law enforcement agency shall conduct an investigation, other than an investigation under Subchapter E, as provided by this section and Article 2.27, Code of Criminal Procedure, if the investigation is of a report that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child. Immediately on receipt of a report described by this subsection, the department shall notify the appropriate local law enforcement agency of the report.

(i) If at any time during an investigation of a report of child abuse or neglect to which the department has assigned the highest priority the department is unable to locate the child who is the subject of the report of abuse or neglect or the child's family, the department shall notify the Department of Public Safety that the location of the child and the child's family is unknown. If the Department of Public Safety locates the child and the child's family, the Department of Public Safety shall notify the department of the location of the child and the child's family.

(j) In geographic areas with demonstrated need, the department shall designate employees to serve specifically as investigators and responders for after-hours reports of child abuse or neglect.

(k) ~~(j)~~ In an investigation of a report of abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare, the department shall determine whether the person is an active duty member of the United States armed forces or the spouse of a member on active duty. If the department determines the person is an active duty member of the United States armed forces or the spouse of a member on active duty, the department shall notify the United States Department of Defense Family Advocacy Program at the closest active duty military installation of the investigation.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 94, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 943, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 70, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1137, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 23, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 867, Sec. 1, eff. Sept. 1, 2003. Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.16(a), eff. September 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.129, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 1056 (H.B. 2053), Sec. 1, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 2, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 356 (H.B. 2124), Sec. 1, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 4, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 9, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 4170, Sec. 21.001(13), eff. Sept. 1, 2019.

ANNOTATIONS

State v. Aguilar, 535 S.W.3d 600 (Tex. App.—San Antonio 2017, no pet.). There is no agency relationship based merely on a joint investigation between CPS and law enforcement.

Department of Protective & Regulatory Services v. Schutz, 101 S.W.3d 512 (Tex. App.—Houston [1st Dist.] 2002, no pet.). The court discusses the distinction between a "foster home" and an "agency foster home" for purposes of this section. A "foster home" is "a child-care facility that provides care for not more than six children for 24 hours a day." Tex. Hum. Res. Code § 42.002(6). An "agency foster home" is the same thing except that an agency foster home "is used only by a licensed child-placing agency, and meets department standards." Tex. Hum. Res. Code § 42.002(11).

Sec. 261.3011. JOINT INVESTIGATION GUIDELINES AND TRAINING

(a) The department shall, in consultation with the appropriate law enforcement agencies, develop guidelines and protocols for joint investigations by the department and the law enforcement agency under Section 261.301. The guidelines and protocols must:

(1) clarify the respective roles of the department and law enforcement agency in conducting the investigation;

(2) require that mutual child protective services and law enforcement training and agreements be implemented by both entities to ensure the integrity and best outcomes of joint investigations; and

(3) incorporate the use of forensic methods in determining the occurrence of child abuse and neglect.

(b) The department shall collaborate with law enforcement agencies to provide to department investigators and law enforcement officers responsible for investigating reports of abuse and neglect joint training relating to methods to effectively conduct joint investigations under Section 261.301. The training must include information on interviewing techniques, evidence gathering, and testifying in court for criminal investigations, as well as instruction on rights provided by the Fourth Amendment to the United States Constitution.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.17, eff. September 1, 2005.

ANNOTATIONS

State v. Aguilar, 535 S.W.3d 600 (Tex. App.—San Antonio 2017, no pet.). There is no agency relationship based merely on a joint investigation between CPS and law enforcement.

Sec. 261.3013. CASE CLOSURE AGREEMENTS PROHIBITED

(a) Except as provided by Subsection (b), on closing a case, the department may not enter into a written agreement with a child's parent or another adult with whom the child resides that requires the parent or other adult to take certain actions after the case is closed to ensure the child's safety.

(b) This section does not apply to an agreement that is entered into by a parent or other adult:

(1) following the removal of a child and that is subject to the approval of a court with continuing jurisdiction over the child;

(2) as a result of the person's participation in family group conferencing; or

(3) as part of a formal case closure plan agreed to by the person who will continue to care for a child as a result of a parental child safety placement.

(c) The department shall develop policies to guide caseworkers in the development of case closure agreements authorized under Subsections (b)(2) and (3).

Added by Acts 2011, 82nd Leg., R.S., Ch. 598 (S.B. 218), Sec. 1, eff. September 1, 2011.

Sec. 261.3015. ALTERNATIVE RESPONSE SYSTEM

(a) In assigning priorities and prescribing investigative procedures based on the severity and immediacy of the alleged harm to a child under Section 261.301(d), the department shall establish an alternative response system to allow the department to make the most effective use of resources to investigate and respond to reported cases of abuse and neglect.

(b) Notwithstanding Section 261.301, the department may, in accordance with this section and department rules, conduct an alternative response to a report of abuse or neglect if the report does not:

(1) allege sexual abuse of a child;

(2) allege abuse or neglect that caused the death of a child; or

(3) indicate a risk of serious physical injury or immediate serious harm to a child.

(c) The department may administratively close a reported case of abuse or neglect without completing the investigation or alternative response and without providing services or making a referral to another entity for assistance if the department determines, after contacting a professional or other credible source, that the child's safety can be assured without further investigation, response, services, or assistance.

(d) In determining how to classify a reported case of abuse or neglect under the alternative response system, the child's safety is the primary concern. The classification of a case may be changed as warranted by the circumstances.

(e) An alternative response to a report of abuse or neglect must include:

(1) a safety assessment of the child who is the subject of the report;

(2) an assessment of the child's family; and

(3) in collaboration with the child's family, identification of any necessary and appropriate service or support to reduce the risk of future harm to the child.

(f) An alternative response to a report of abuse or neglect may not include a formal determination of whether the alleged abuse or neglect occurred.

(g) The department may implement the alternative response in one or more of the department's administrative regions before implementing the system statewide. The department shall study the results of the system in the regions where the system has been implemented in determining the method by which to implement the system statewide.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 71, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.19(a), eff. September 1, 2005. Acts 2013, 83rd Leg., R.S., Ch. 420 (S.B. 423), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.130, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.131, eff. April 2, 2015.

Sec. 261.3016. TRAINING OF PERSONNEL RECEIVING REPORTS OF ABUSE AND NEGLECT

The department shall develop, in cooperation with local law enforcement officials and the Commission on State Emergency Communications, a training program for department personnel who receive reports of abuse and neglect. The training program must include information on:

(1) the proper methods of screening reports of abuse and neglect; and

(2) ways to determine the seriousness of a report, including determining whether a report alleges circumstances that could result in the death of or serious harm to a child or whether the report is less serious in nature.

Added by Acts 2005, 79th Leg., Ch. 54 (H.B. 801), Sec. 1, eff. September 1, 2005. Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.20, eff. September 1, 2005.

Sec. 261.3017. CONSULTATION WITH PHYSICIAN NETWORKS AND SYSTEMS REGARDING CERTAIN MEDICAL CONDITIONS

(a) In this section:

(1) "Network" means the Forensic Assessment Center Network.

(2) "System" means the entities that receive grants under the Texas Medical Child Abuse Resources and Education System (MEDCARES) authorized by Chapter 1001, Health and Safety Code.

(b) Any agreement between the department and the network or between the Department of State Health Services and the system to provide assistance in connection with abuse and neglect investigations conducted by the department must require the network and the system to have the ability to obtain consultations with physicians, including radiologists, geneticists, and endocrinologists, who specialize in identifying unique health conditions, including:

(1) rickets;

(2) Ehlers-Danlos Syndrome;

(3) osteogenesis imperfecta;

(4) vitamin D deficiency; and

(5) other similar metabolic bone diseases or connective tissue disorders.

(c) If, during an abuse or neglect investigation or an assessment provided under Subsection (b), the department or a physician in the network determines that a child requires a specialty consultation with a physician, the department or the physician shall refer the child's case to the system for the consultation, if the system has available capacity to take the child's case.

(d) In providing assessments to the department as provided by Subsection (b), the network and the system must use a blind peer review process to resolve cases where physicians in the network or system disagree in the assessment of the causes of a child's injuries or in the presence of a condition listed under Subsection (b).

Added by Acts 2017, 85th Leg., R.S., Ch. 502 (H.B. 2848), Sec. 1, eff. Sept 1. 2017.

Sec. 261.3018. ABBREVIATED INVESTIGATION AND ADMINISTRATIVE CLOSURE OF CERTAIN CASES

(a) A department caseworker may refer a reported case of child abuse or neglect to a department supervisor for abbreviated investigation or administrative closure at any time before the 60th day after the date the report is received if:

(1) there is no prior report of abuse or neglect of the child who is the subject of the report;

(2) the department has not received an additional report of abuse or neglect of the child following the initial report;

(3) after contacting a professional or other credible source, the caseworker determines that the child's safety can be assured without further investigation, response, services, or assistance; and

(4) the caseworker determines that no abuse or neglect occurred.

(b) A department supervisor shall review each reported case of child abuse or neglect that has remained open for more than 60 days and administratively close the case if:

(1) the supervisor determines that:

(A) the circumstances described by Subsections (a)(1)–(4) exist; and

(B) closing the case would not expose the child to an undue risk of harm; and

(2) the department director grants approval for the administrative closure of the case.

(c) A department supervisor may reassign a reported case of child abuse or neglect that does not qualify for abbreviated investigation or administrative closure under Subsection (a) or (b) to a different department caseworker if the supervisor determines that reassignment would allow the department to make the most effective use of resources to investigate and respond to reported cases of abuse or neglect.

(d) The executive commissioner shall adopt rules necessary to implement this section.

(e) In this section, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

Added by Acts 2017, 85th Leg., R.S., Ch. 523 (S.B. 190), Sec. 1, eff. June 9, 2017. Redesignated from Sec. 261.3017 by Acts 2019, 86th Leg., H.B. 4170, Sec. 21.001(14), eff. Sept. 1, 2019.

Sec. 261.302. CONDUCT OF INVESTIGATION

(a) The investigation may include:

(1) a visit to the child's home, unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit; and

(2) an interview with and examination of the subject child, which may include a medical, psychological, or psychiatric examination.

(b) The interview with and examination of the child may:

(1) be conducted at any reasonable time and place, including the child's home or the child's school;

(2) include the presence of persons the department determines are necessary; and

(3) include transporting the child for purposes relating to the interview or investigation.

(b–1) Before the department may transport a child as provided by Subsection (b)(3), the department shall attempt to notify the parent or other person having custody of the child of the transport.

(c) The investigation may include an interview with the child's parents and an interview with and medical, psychological, or psychiatric examination of any child in the home.

(d) If, before an investigation is completed, the investigating agency believes that the immediate removal of a child from the child's home is necessary to protect the child from further abuse or neglect, the investigating agency shall file a petition or take other action under Chapter 262 to provide for the temporary care and protection of the child.

(e) An interview with a child in which the allegations of the current investigation are discussed and that is conducted by the department during the investigation stage shall be audiotaped or videotaped unless:

(1) the recording equipment malfunctions and the malfunction is not the result of a failure to maintain the equipment or bring adequate supplies for the equipment;

(2) the child is unwilling to allow the interview to be recorded after the department makes a reasonable effort consistent with the child's age and development and the circumstances of the case to convince the child to allow the recording; or

(3) due to circumstances that could not have been reasonably foreseen or prevented by the department, the department does not have the necessary recording equipment because the department employee conducting the interview does not ordinarily conduct interviews.

(e–1) An interview with a child alleged to be a victim of physical abuse or sexual abuse conducted by an investigating agency other than the department shall be audiotaped or videotaped unless the investigating agency determines that good cause exists for not audiotaping or videotaping the interview in accordance with rules of the agency. Good cause may include, but is not limited to, such considerations as the age of the child and the nature and seriousness of the allegations under investigation. Nothing in this subsection shall be construed as prohibiting the investigating agency from audiotaping or videotaping an interview of a child on any case for which such audiotaping or videotaping is not required under this subsection. The fact that the investigating agency failed to audiotape or videotape an interview is admissible at the trial of the offense that is the subject of the interview.

(f) A person commits an offense if the person is notified of the time of the transport of a child by the department and the location from which the transport is initiated and the person is present at the location when the transport is initiated and attempts to interfere with the department's investigation. An offense under this subsection is a Class B misdemeanor. It is an exception to the application of this subsection that the department requested the person to be present at the site of the transport.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 95, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 13, 14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 73, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.21, eff. September 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.132, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 19, eff. September 1, 2015.

Sec. 261.3021. CASEWORK DOCUMENTATION AND MANAGEMENT

Subject to the appropriation of money, the department shall identify critical investigation actions that impact child safety and require department caseworkers to document those actions in a child's case file not later than the day after the action occurs.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.22, eff. September 1, 2005. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 20, eff. September 1, 2015.

Sec. 261.3022. CHILD SAFETY CHECK ALERT LIST

(a) The Department of Public Safety of the State of Texas shall maintain a child safety check alert list as part of the Texas Crime Information Center to help locate a child or the child's family for purposes of:

(1) investigating a report of child abuse or neglect;

(2) providing protective services to a family receiving family-based support services; or

(3) providing protective services to the family of a child in the managing conservatorship of the department.

(b) If the department is unable to locate a child or the child's family for a purpose described by Subsection (a) after the department has attempted to locate the child for not more than 20 days, the department shall notify the Texas Department of Public Safety that the department is unable to locate the child or the child's family. The notice must include the information required by Subsections (c)(1)–(10).

(c) On receipt of the notice from the department, the Texas Department of Public Safety shall notify the Texas Crime Information Center to place the child and the child's family on a child safety check alert list. The alert list must include the following information if known or readily available:

(1) the name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the family member alleged to have abused or neglected a child according to the report the department is attempting to investigate;

(2) the name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of any parent, managing conservator, or guardian of the child who cannot be located for the purposes described by Subsection (a);

(3) the name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the child who is the subject of the report or is receiving services described by Subsection (a)(2) or (3);

(4) if applicable, a code identifying the type of child abuse or neglect alleged or determined to have been committed against the child;

(5) the family's last known address;

(6) any known description of the motor vehicle, including the vehicle's make, color, style of body, model year, and vehicle identification number, in which the child is suspected to be transported;

(7) the case number assigned by the department;

(8) the department's dedicated law-enforcement telephone number for statewide intake;

(9) the date and time when and the location where the child was last seen; and

(10) any other information required for an entry as established by the center.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.22, eff. September 1, 2005. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1056 (H.B. 2053), Sec. 2, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1202 (S.B. 1406), Sec. 1, eff. September 1, 2015.

Sec. 261.3023. Law Enforcement Response to Child Safety Check Alert

If a law enforcement officer encounters a child or other person listed on the Texas Crime Information Center's child safety check alert list, the law enforcement officer shall follow the procedures described by Article 2.272, Code of Criminal Procedure.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.22, eff. September 1, 2005. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1056 (H.B. 2053), Sec. 3, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1202 (S.B. 1406), Sec. 2, eff. September 1, 2015. Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 7.006, eff. September 1, 2017.

Sec. 261.3024. Removal from Child Safety Check Alert List

(a) A law enforcement officer who locates a child listed on the Texas Crime Information Center's child safety check alert list shall report that the child has been located in the manner prescribed by Article 2.272, Code of Criminal Procedure.

(b) If the department locates a child who has been placed on the child safety check alert list established under Section 261.3022 through a means other than information reported to the department by a law enforcement officer under Article 2.272, Code of Criminal Procedure, the department shall report to the Texas Crime Information Center that the child has been located.

(c) On receipt of notice that a child has been located, the Texas Crime Information Center shall remove the child and the child's family from the child safety check alert list.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.22, eff. September 1, 2005. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1056 (H.B. 2053), Sec. 4, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1202 (S.B. 1406), Sec. 3, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 7.007, eff. September 1, 2017.

For expiration of this section, see Subsection (c).

Sec. 261.3025. Child Safety Check Alert List Progress Report

(a) Not later than February 1 of each year, the Department of Public Safety, with the assistance of the department, shall prepare and submit a report on the use of the Texas Crime Information Center's child safety check alert list to the standing committees of the senate and the house of representatives with primary jurisdiction over child protective services.

(b) The report must include the following information for the preceding calendar year:

(1) the number of law enforcement officers who completed the training program established under Section 1701.266, Occupations Code;

(2) the number of children who have been placed on the child safety check alert list and the number of those children who have been located; and

(3) the number of families who have been placed on the child safety check alert list and the number of those families who have been located.

(c) This section expires February 2, 2021.

Added by Acts 2015, 84th Leg., R.S., Ch. 1056 (H.B. 2053), Sec. 5, eff. March 1, 2016; Amended by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(5), eff. September 1, 2017.

Sec. 261.303. INTERFERENCE WITH INVESTIGATION; COURT ORDER

(a) A person may not interfere with an investigation of a report of child abuse or neglect conducted by the department.

(b) If admission to the home, school, or any place where the child may be cannot be obtained, then for good cause shown the court having family law jurisdiction shall order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance for the interview, examination, and investigation.

(c) If a parent or person responsible for the child's care does not consent to release of the child's prior medical, psychological, or psychiatric records or to a medical, psychological, or psychiatric examination of the child that is requested by the department, the court having family law jurisdiction shall, for good cause shown, order the records to be released or the examination to be made at the times and places designated by the court.

(d) A person, including a medical facility, that makes a report under Subchapter B shall release to the department, as part of the required report under Section 261.103, records that directly relate to the suspected abuse or neglect without requiring parental consent or a court order. If a child is transferred from a reporting medical facility to another medical facility to treat the injury or condition that formed the basis for the original report, the transferee medical facility shall, at the department's request, release to the department records relating to the injury or condition without requiring parental consent or a court order.

(e) A person, including a utility company, that has confidential locating or identifying information regarding a family that is the subject of an investigation under this chapter shall release that information to the department on request. The release of information to the department as required by this subsection by a person, including a utility company, is not subject to Section 552.352, Government Code, or any other law providing liability for the release of confidential information.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 96, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1150, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 24, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 6, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.133, eff. April 2, 2015.

ANNOTATIONS

In re Texas Department of Family & Protective Services, 255 S.W.3d 613 (Tex. 2008, orig. proceeding) (per curiam). This section allows the TDFPS to protect children without their removal and if actual removal is not warranted.

B.H. v. Texas Department of Family & Protective Services, No. 03-18-00101-CV, 2018 WL 1220897 (Tex. App.—Austin Mar. 9, 2018, no pet.) (mem. op.). An order to aid in an investigation is a temporary order and not subject to the court of appeals' jurisdiction.

Sec. 261.3031. FAILURE TO COOPERATE WITH INVESTIGATION; DEPARTMENT RESPONSE

(a) If a parent or other person refuses to cooperate with the department's investigation of the alleged abuse or neglect of a child and the refusal poses a risk to the child's safety, the department shall seek assistance from the appropriate attorney with responsibility for representing the department as provided by Section 264.009 to obtain a court order as described by Section 261.303.

(b) A person's failure to report to an agency authorized to investigate abuse or neglect of a child within a reasonable time after receiving proper notice constitutes a refusal by the person to cooperate with the department's investigation. A summons may be issued to locate the person.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.23, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 7, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.134, eff. April 2, 2015.

Sec. 261.3032. INTERFERENCE WITH INVESTIGATION; CRIMINAL PENALTY

(a) A person commits an offense if, with the intent to interfere with the department's investigation of a report of abuse or neglect of a child, the person relocates the person's residence, either temporarily or permanently, without notifying the department of the address of the person's new residence or conceals the child and the person's relocation or concealment interferes with the department's investigation.

(b) An offense under this section is a Class B misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.24, eff. September 1, 2005.

Sec. 261.304. INVESTIGATION OF ANONYMOUS REPORT

(a) If the department receives an anonymous report of child abuse or neglect by a person responsible for a child's care, custody, or welfare, the department shall conduct a preliminary investigation to determine whether there is any evidence to corroborate the report.

(b) An investigation under this section may include a visit to the child's home, unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit, an interview with and examination of the child, and an interview with the child's parents. In addition, the department may interview any other person the department believes may have relevant information.

(c) Unless the department determines that there is some evidence to corroborate the report of abuse, the department may not conduct the thorough investigation required by this chapter or take any action against the person accused of abuse.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2017, 85th Leg., R.S., Ch. 416 (S.B. 1063), Sec. 1, eff. Sept. 1, 2017.

Sec. 261.305. ACCESS TO MENTAL HEALTH RECORDS

(a) An investigation may include an inquiry into the possibility that a parent or a person responsible for the care of a child who is the subject of a report under Subchapter B has a history of medical or mental illness.

(b) If the parent or person does not consent to an examination or allow the department to have access to medical or mental health records requested by the department, the court having family law jurisdiction, for good cause shown, shall order the examination to be made or that the department be permitted to have access to the records under terms and conditions prescribed by the court.

(c) If the court determines that the parent or person is indigent, the court shall appoint an attorney to represent the parent or person at the hearing. The fees for the appointed attorney shall be paid as provided by Chapter 107.

(d) A parent or person responsible for the child's care is entitled to notice and a hearing when the department seeks a court order to allow a medical, psychological, or psychiatric examination or access to medical or mental health records.

(e) This access does not constitute a waiver of confidentiality.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 6, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 25, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.135, eff. April 2, 2015.

Sec. 261.306. REMOVAL OF CHILD FROM STATE

(a) If the department has reason to believe that a person responsible for the care, custody, or welfare of the child may remove the child from the state before the investigation is completed, the department may file an application for a temporary restraining order in a district court without regard to continuing jurisdiction of the child as provided in Chapter 155.

(b) The court may render a temporary restraining order prohibiting the person from removing the child from the state pending completion of the investigation if the court:

(1) finds that the department has probable cause to conduct the investigation; and

(2) has reason to believe that the person may remove the child from the state.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.136, eff. April 2, 2015.

Sec. 261.307. INFORMATION RELATING TO INVESTIGATION PROCEDURE AND CHILD PLACEMENT RESOURCES

(a) As soon as possible after initiating an investigation of a parent or other person having legal custody of a child, the department shall provide to the person:

(1) a summary that:

(A) is brief and easily understood;

(B) is written in a language that the person understands, or if the person is illiterate, is read to the person in a language that the person understands; and

(C) contains the following information:

(i) the department's procedures for conducting an investigation of alleged child abuse or neglect, including:

(a) a description of the circumstances under which the department would request to remove the child from the home through the judicial system; and

(b) an explanation that the law requires the department to refer all reports of alleged child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

(ii) the person's right to file a complaint with the department or to request a review of the findings made by the department in the investigation;

(iii) the person's right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation or the child's safety;

(iv) the person's right to seek legal counsel;

(v) references to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions; and

(vi) the process the person may use to acquire access to the child if the child is removed from the home;

(2) if the department determines that removal of the child may be warranted, a proposed child placement resources form that:

(A) instructs the parent or other person having legal custody of the child to:

(i) complete and return the form to the department or agency; ~~and~~

(ii) identify in the form **at least** three individuals who could be relative caregivers or designated caregivers, as those terms are defined by Section 264.751; ~~and~~

(iii) ask the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative caregiver or designated caregiver for the child; and

(iv) list on the form the name of each individual identified by the child as a potential relative caregiver or designated caregiver; and

(B) informs the parent or other person of a location that is available to the parent or other person to submit the information in the form 24 hours a day either in person or by facsimile machine or e-mail; and

(3) an informational manual required by Section 261.3071.

(b) The child placement resources form described by Subsection (a)(2) must include information on the periods of time by which the department must complete a background check.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.25(a), eff. September 1, 2005. Acts 2019, 86th Leg., H.B. 3390, Secs. 3, 4, eff. May 27, 2019.

ANNOTATIONS

In re Northrop, 305 S.W.3d 172 (Tex. App.—Houston [1st Dist.] 2009, orig. proceeding). The relator (a family relative) appealed the striking of his intervention, which was filed with the parents' consent, in a TDFPS case seeking termination of the parents' rights. The court of appeals upheld the striking of the intervention because allowing it would put the case at serious risk of being dismissed, in which case the children would be returned to their biological parents without a trial on the merits of the termination case.

Sec. 261.3071. INFORMATIONAL MANUALS

(a) In this section:

(1) "Designated caregiver" and "relative caregiver" have the meanings assigned those terms by Section 264.751.

(2) "Voluntary caregiver" means a person who voluntarily agrees to provide temporary care for a child:

(A) who is the subject of an investigation by the department or whose parent, managing conservator, possessory conservator, guardian, caretaker, or custodian is receiving family-based safety services from the department;

(B) who is not in the conservatorship of the department; and

(C) who is placed in the care of the person by the parent or other person having legal custody of the child.

(b) The department shall develop and publish informational manuals that provide information for:

(1) a parent or other person having custody of a child who is the subject of an investigation under this chapter;

(2) a person who is selected by the department to be the child's relative or designated caregiver; and

(3) a voluntary caregiver.

(c) Information provided in the manuals must be in both English and Spanish and must include, as appropriate:

(1) useful indexes of information such as telephone numbers;

(2) the information required to be provided under Section 261.307(a)(1);

(3) information describing the rights and duties of a relative or designated caregiver;

(4) information regarding:

i. the relative and other designated caregiver program under Subchapter I, Chapter 264, **and the option for the relative or other designated caregiver to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and**

(B) the permanency care assistance program under Subchapter K, Chapter 264; and

(5) information regarding the role of a voluntary caregiver, including information on how to obtain any documentation necessary to provide for a child's needs.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.26, eff. September 1, 2005. Amended by: Acts 2009, 81st Leg., R.S., Ch. 825 (S.B. 1723), Sec. 1, eff. June 19, 2009. Acts 2019, 86th Leg., H.B. 1884, Sec. 1, eff. Sept. 1, 2019.

Sec. 261.308. SUBMISSION OF INVESTIGATION REPORT

(a) The department shall make a complete written report of the investigation.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(9), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(9), eff. September 1, 2015.

(d) The department shall release information regarding a person alleged to have committed abuse or neglect to persons who have control over the person's access to children, including, as appropriate, the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, ~~or~~ the **public** school principal or director**, the director of the open-enrollment charter school, or the chief executive officer of the private school** if the department determines that:

(1) the person alleged to have committed abuse or neglect poses a substantial and immediate risk of harm to one or more children outside the family of a child who is the subject of the investigation; and

(2) the release of the information is necessary to assist in protecting one or more children from the person alleged to have committed abuse or neglect.

(e) On request, the department shall release information about a person alleged to have committed abuse or neglect to the State Board for Educator Certification if the board has a reasonable basis for believing that the information is necessary to assist the board in protecting children from the person alleged to have committed abuse or neglect.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 97, eff. Sept. 1, 1995. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1372 (S.B. 9), Sec. 13, eff. June 15, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.137, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(9), eff. September 1, 2015. Acts 2019, 86th Leg., S.B. 1231, Sec. 2, eff. Sept. 1, 2019.

Sec. 261.309. Review of Department Investigations

(a) The executive commissioner shall by rule establish policies and procedures to resolve complaints relating to and conduct reviews of child abuse or neglect investigations conducted by the department.

(b) If a person under investigation for allegedly abusing or neglecting a child requests clarification of the status of the person's case or files a complaint relating to the conduct of the department's staff or to department policy, the department shall conduct an informal review to clarify the person's status or resolve the complaint. The division of the department responsible for investigating complaints shall conduct the informal review as soon as possible but not later than the 14th day after the date the request or complaint is received.

(c) If, after the department's investigation, the person who is alleged to have abused or neglected a child disputes the department's determination of whether child abuse or neglect occurred, the person may request an administrative review of the findings. A department employee in administration who was not involved in or did not directly supervise the investigation shall conduct the review. The review must sustain, alter, or reverse the department's original findings in the investigation.

(d) The department employee shall conduct the review prescribed by Subsection (c) as soon as possible but not later than the 45th day after the date the department receives the request, unless the department has good cause for extending the deadline. If a civil or criminal court proceeding or an ongoing criminal investigation relating to the alleged abuse or neglect investigated by the department is pending, the department may postpone the review until the court proceeding is completed.

(e) A person is not required to exhaust the remedies provided by this section before pursuing a judicial remedy provided by law.

(f) This section does not provide for a review of an order rendered by a court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.138, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 21, eff. September 1, 2015.

COMMENTS

The critical difference between *Schutz* and *Gates*, discussed below, is that in *Schutz*, the appellee was a licensee of the TDFPS who fell under chapter 42 of the Human Resources Code. In *Gates*, the appellant was not a licensee but a parent who had been investigated.

ANNOTATIONS

Gates v. Texas Department of Family & Protective Services, 252 S.W.3d 90 (Tex. App.—Austin 2008, no pet.). This section did not require a person to exhaust her administrative remedies before filing suit in district court because she complained only of her due-process rights being violated, which is a judicial remedy provided by law under subsection 261.309(e).

Department of Protective & Regulatory Services v. Schutz, 101 S.W.3d 512 (Tex. App.—Houston [1st Dist.] 2002, no pet.). This section requires foster parents to exhaust their administrative remedies before filing suit in district court because a foster home is a child-care facility as defined by this section.

RESOURCES

The following statutes pertain to this section: 40 Tex. Admin. Code §§ 700.516, 730.1701–.1702, and 730.605.

Sec. 261.310. INVESTIGATION STANDARDS

(a) The executive commissioner shall by rule develop and adopt standards for persons who investigate suspected child abuse or neglect at the state or local level. The standards shall encourage professionalism and consistency in the investigation of suspected child abuse or neglect.

(b) The standards must provide for a minimum number of hours of annual professional training for interviewers and investigators of suspected child abuse or neglect.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(10), eff. September 1, 2015.

(d) The standards shall:

(1) recommend that videotaped and audiotaped interviews be uninterrupted;

(2) recommend a maximum number of interviews with and examinations of a suspected victim;

(3) provide procedures to preserve evidence, including the original recordings of the intake telephone calls, original notes, videotapes, and audiotapes, for one year; and

(4) provide that an investigator of suspected child abuse or neglect make a reasonable effort to locate and inform each parent of a child of any report of abuse or neglect relating to the child.

(e) The department, in conjunction with the Department of Public Safety, shall provide to the department's residential child-care facility licensing investigators advanced training in investigative protocols and techniques.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.27, eff. September 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.139, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(10), eff. September 1, 2015.

Sec. 261.311. NOTICE OF REPORT

(a) When during an investigation of a report of suspected child abuse or neglect a representative of the department conducts an interview with or an examination of a child, the department shall make a reasonable effort before 24 hours after the time of the interview or examination to notify each parent of the child and the child's legal guardian, if one has been appointed, of the nature of the allegation and of the fact that the interview or examination was conducted.

(b) If a report of suspected child abuse or neglect is administratively closed by the department as a result of a preliminary investigation that did not include an interview or examination of the child, the department shall make a reasonable effort before the expiration of 24 hours after the time the investigation is closed to notify each parent and legal guardian of the child of the disposition of the investigation.

(c) The notice required by Subsection (a) or (b) is not required if the department or agency determines that the notice is likely to endanger the safety of the child who is the subject of the report, the person who made the report, or any other person who participates in the investigation of the report.

(d) The notice required by Subsection (a) or (b) may be delayed at the request of a law enforcement agency if notification during the required time would interfere with an ongoing criminal investigation.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 74, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.140, eff. April 2, 2015.

Sec. 261.312. REVIEW TEAMS; OFFENSE

(a) The department shall establish review teams to evaluate department casework and decision-making related to investigations by the department of child abuse or neglect. The department may create one or more review teams for each region of the department for child protective services. A review team is a citizen review panel or a similar entity for the purposes of federal law relating to a state's child protection standards.

(b) A review team consists of at least five members who serve staggered two-year terms. Review team members are appointed by the commissioner of the department and consist of volunteers who live in and are broadly representative of the region in which the review team is established and have expertise in the prevention and treatment of child abuse and neglect. At least two members of a review team must be parents who have not been convicted of or indicted for an offense involving child abuse or neglect, have not been determined by the department to have engaged in child abuse or neglect, and are not under investigation by the department for child abuse or neglect. A member of a review team is a department volunteer for the purposes of Section 411.114, Government Code.

(c) A review team conducting a review of an investigation may conduct the review by examining the facts of the case as outlined by the department caseworker and law enforcement personnel. A review team member acting in the member's official capacity may receive information made confidential under Section 40.005, Human Resources Code, or Section 261.201.

(d) A review team shall report to the department the results of the team's review of an investigation. The review team's report may not include confidential information. The findings contained in a review team's report are subject to disclosure under Chapter 552, Government Code. This section does not require a law enforcement agency to divulge information to a review team that the agency believes would compromise an ongoing criminal case, investigation, or proceeding.

(e) A member of a review team commits an offense if the member discloses confidential information. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 3, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 16, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1372 (S.B. 939), Sec. 3, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.141, eff. April 2, 2015.

Sec. 261.3125. CHILD SAFETY SPECIALISTS

(a) The department shall employ in each of the department's administrative regions at least one child safety specialist. The job responsibilities of the child safety specialist must focus on child abuse and neglect investigation issues, including reports of child abuse required by Section 261.101, to achieve a greater compliance with that section, and on assessing and improving the effectiveness of the department in providing for the protection of children in the region.

(b) The duties of a child safety specialist must include the duty to:

(1) conduct staff reviews and evaluations of cases determined to involve a high risk to the health or safety of a child, including cases of abuse reported under Section 261.101, to ensure that risk assessment tools are fully and correctly used;

(2) review and evaluate cases in which there have been multiple referrals to the department of child abuse or neglect involving the same family, child, or person alleged to have committed the abuse or neglect; and

(3) approve decisions and assessments related to investigations of cases of child abuse or neglect that involve a high risk to the health or safety of a child.

Added by Acts 1999, 76th Leg., ch. 1490, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.29, eff. September 1, 2005.

Sec. 261.3126. COLOCATION OF INVESTIGATORS

(a) In each county, to the extent possible, the department and the local law enforcement agencies that investigate child abuse in the county shall colocate in the same offices investigators from the department and the law enforcement agencies to improve the efficiency of child abuse investigations. With approval of the local children's advocacy center and its partner agencies, in each county in which a children's advocacy center established under Section 264.402 is located, the department shall attempt to locate investigators from the department and county and municipal law enforcement agencies at the center.

(b) A law enforcement agency is not required to comply with the colocation requirements of this section if the law enforcement agency does not have a full-time peace officer solely assigned to investigate reports of child abuse and neglect.

(c) If a county does not have a children's advocacy center, the department shall work with the local community to encourage one as provided by Section 264.402.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.30, eff. September 1, 2005.

Sec. 261.314. TESTING

(a) The department shall provide testing as necessary for the welfare of a child who the department believes, after an investigation under this chapter, has been sexually abused, including human immunodeficiency virus (HIV) testing of a child who was abused in a manner by which HIV may be transmitted.

(b) Except as provided by Subsection (c), the results of a test under this section are confidential.

(c) If requested, the department shall report the results of a test under this section to:

(1) a court having jurisdiction of a proceeding involving the child or a proceeding involving a person suspected of abusing the child;

(2) a person responsible for the care and custody of the child as a foster parent; and

(3) a person seeking to adopt the child.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 7, eff. Sept. 1, 1995.

Sec. 261.315. Removal of Certain Investigation Information from Records

(a) At the conclusion of an investigation in which the department determines that the person alleged to have abused or neglected a child did not commit abuse or neglect, the department shall notify the person of the person's right to request the department to remove information about the person's alleged role in the abuse or neglect report from the department's records.

(b) On request under Subsection (a) by a person whom the department has determined did not commit abuse or neglect, the department shall remove information from the department's records concerning the person's alleged role in the abuse or neglect report.

(c) The executive commissioner shall adopt rules necessary to administer this section.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 75, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.142, eff. April 2, 2015.

Sec. 261.316. Exemption from Fees for Medical Records

The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a medical record from a hospital or health care provider if the request for a record is made in the course of an investigation by the department.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 17, eff. Sept. 1, 1997. Renumbered from Sec. 261.315 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(27), eff. Sept. 1, 1999.

SUBCHAPTER E. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION IN CERTAIN FACILITIES

Sec. 261.401. Agency Investigation

(a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 14, and Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 32, eff. September 1, 2017.

(b) Except as provided by Section 261.404 of this code and Section 531.02013(1)(D), Government Code, a state agency that operates, licenses, certifies, registers, or lists a facility in which children are located or provides oversight of a program that serves children shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program. The primary purpose of the investigation shall be the protection of the child.

(c) A state agency shall adopt rules relating to the investigation and resolution of reports received as provided by this subchapter. The executive commissioner shall review and approve the rules of agencies other than the Texas Department of Criminal Justice or the Texas Juvenile Justice Department to

ensure that those agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

(d) The Texas School for the Blind and Visually Impaired and the Texas School for the Deaf shall adopt policies relating to the investigation and resolution of reports received as provided by this subchapter. The executive commissioner shall review and approve the policies to ensure that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf adopt those policies in a manner consistent with the minimum standards adopted by the executive commissioner under Section 261.407.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 98, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 355, Sec. 2, eff. Sept. 1, 2001. Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 29, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 6, eff. June 11, 2009. Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 18, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.143, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 5, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 10, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 14, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 32, eff. Sept. 1, 2017.

ANNOTATIONS

Department of Protective & Regulatory Services v. Schutz, 101 S.W.3d 512 (Tex. App.—Houston [1st Dist.] 2002, no pet.). This section requires foster parents to exhaust their administrative remedies before filing suit in district court because a foster home is a child-care facility as defined by this section.

Sec. 261.402. INVESTIGATIVE REPORTS

(a) A state agency shall prepare and keep on file a complete written report of each investigation conducted by the agency under this subchapter.

(b) A state agency shall immediately notify the appropriate state or local law enforcement agency of any report the agency receives, other than a report from a law enforcement agency, that concerns the suspected abuse, neglect, or exploitation of a child or the death of a child from abuse or neglect. If the state agency finds evidence indicating that a child may have been abused, neglected, or exploited, the agency shall report the evidence to the appropriate law enforcement agency.

(c) A state agency that licenses, certifies, or registers a facility in which children are located shall compile, maintain, and make available statistics on the incidence in the facility of child abuse, neglect, and exploitation that is investigated by the agency.

(d) A state agency shall compile, maintain, and make available statistics on the incidence of child abuse, neglect, and exploitation in a facility operated by the state agency.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 99, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 355, Sec. 3, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.144, eff. April 2, 2015.

ANNOTATIONS

McCray v. Booker, No. 09-08-00401-CV, 2009 WL 2616503 (Tex. App.—Beaumont Aug. 27, 2009, pet. denied) (mem. op.), *cert. dismissed*, 560 U.S. 950 (2010). This provision, along with section 261.201, does not create a private cause of action.

Sec. 261.403. COMPLAINTS

(a) If a state agency receives a complaint relating to an investigation conducted by the agency concerning a facility operated by that agency in which children are located, the agency shall refer the complaint to the agency's governing body.

(b) The governing body of a state agency that operates a facility in which children are located shall ensure that the procedure for investigating abuse, neglect, and exploitation allegations and inquiries in the agency's facility is periodically reviewed under the agency's internal audit program required by Chapter 2102, Government Code.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 355, Sec. 4, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.145, eff. April 2, 2015.

Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN RECEIVING SERVICES FROM CERTAIN PROVIDERS

(a) The department shall investigate a report of abuse, neglect, or exploitation of a child receiving services from a provider, as those terms are defined by Section 48.251, Human Resources Code, or as otherwise defined by rule. The department shall also investigate, under Subchapter F, Chapter 48, Human Resources Code, a report of abuse, neglect, or exploitation of a child receiving services from an officer, employee, agent, contractor, or subcontractor of a home and community support services agency licensed under Chapter 142, Health and Safety Code, if the officer, employee, agent, contractor, or subcontractor is or may be the person alleged to have committed the abuse, neglect, or exploitation.

(a–1) For an investigation of a child living in a residence owned, operated, or controlled by a provider of services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, the department, in accordance with Subchapter E, Chapter 48, Human Resources Code, may provide emergency protective services necessary to immediately protect the child from serious physical harm or death and, if necessary, obtain an emergency order for protective services under Section 48.208, Human Resources Code.

(a–2) For an investigation of a child living in a residence owned, operated, or controlled by a provider of services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, regardless of whether the child is receiving services under that waiver program from the provider, the department shall provide protective services to the child in accordance with Subchapter E, Chapter 48, Human Resources Code.

(a–3) For purposes of this section, Subchapters E and F, Chapter 48, Human Resources Code, apply to an investigation of a child and to the provision of protective services to that child in the same manner those subchapters apply to an investigation of an elderly person or person with a disability and the provision of protective services to that person.

(b) The department shall investigate the report under rules developed by the executive commissioner.

(c) If a report under this section relates to a child with an intellectual disability receiving services in a state supported living center or the ICF-IID component of the Rio Grande State Center, the department shall, within one hour of receiving the report, notify the facility in which the child is receiving services of the allegations in the report.

(d) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a child with an intellectual disability described by Subsection (c) has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, the caseworker shall immediately notify the Health and Human Services Commission's office of inspector general and promptly provide the commission's office of inspector general with a copy of the department's investigation report.

(e) The definitions of "abuse" and "neglect" prescribed by Section 261.001 do not apply to an investigation under this section.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1272, Sec. 19(1), and Ch. 860, Sec. 15(1), effective September 1, 2015.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 100, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 907, Sec. 39, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 7, eff. June 11, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.146, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 11, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 12, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 15(1), eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 1, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 2, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 19(1), eff. September 1, 2015.

Sec. 261.405. INVESTIGATIONS IN JUVENILE JUSTICE PROGRAMS AND FACILITIES

(a) Notwithstanding Section 261.001, in this section:

(1) "Abuse" means an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

(2) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(3) "Juvenile justice facility" means a facility operated wholly or partly by the juvenile board, by another governmental unit, or by a private vendor under a contract with the juvenile board, county, or other governmental unit that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a public or private juvenile pre-adjudication secure detention facility, including a holdover facility;

(B) a public or private juvenile post-adjudication secure correctional facility except for a facility operated solely for children committed to the Texas Juvenile Justice Department; and

(C) a public or private non-secure juvenile post-adjudication residential treatment facility that is not licensed by the Department of Family and Protective Services or the Department of State Health Services.

(4) "Juvenile justice program" means a program or department operated wholly or partly by the juvenile board or by a private vendor under a contract with a juvenile board that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a juvenile justice alternative education program;

(B) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court; and

(C) a juvenile probation department.

(5) "Neglect" means a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

(b) A report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility shall be made to the Texas Juvenile Justice Department and a local law enforcement agency for investigation.

(c) The Texas Juvenile Justice Department shall make a prompt, thorough investigation as provided by this chapter if that department receives a report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility. The primary purpose of the investigation shall be the protection of the child.

(d) In an investigation required under this section, the investigating agency shall have access to medical and mental health records as provided by Subchapter D.

(e) As soon as practicable after a child is taken into custody or placed in a juvenile justice facility or juvenile justice program, the facility or program shall provide the child's parents with:

(1) information regarding the reporting of suspected abuse, neglect, or exploitation of a child in a juvenile justice facility or juvenile justice program to the Texas Juvenile Justice Department; and

(2) the Texas Juvenile Justice Department's toll-free number for this reporting.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 100, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 162, Sec. 2; Acts 1997, 75th Leg., ch. 1374, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 7, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 26, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1477, Sec. 26, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1297, Sec. 47, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 283, Sec. 29, eff. Sept. 1, 2003. Acts 2005, 79th Leg., Ch. 949 (H.B. 1575), Sec. 28, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 30, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.147, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 83, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 6, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 11, eff. Sept. 1, 2017.

Sec. 261.406. INVESTIGATIONS IN SCHOOLS

(a) On receipt of a report of alleged or suspected abuse or neglect of a child in a public or private school ~~under the jurisdiction of the Texas Education Agency~~, the department shall perform an investigation as provided by this chapter.

(b) The department shall send a copy of the completed report of the department's investigation to the Texas Education Agency **or, in the case of a private school, the school's chief executive officer**. On request, the department shall provide a copy of the completed report of the department's investigation to the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, ~~and~~ the **public** school principal or director, **or the chief executive officer of the private school,** unless the principal, ~~or~~ director**, or chief executive officer** is alleged

to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. **Except as otherwise provided by this subsection** ~~Other than the persons authorized by the section to receive a copy of the report~~, Section 261.201(b) applies to the release of the report relating to the investigation of abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

(c) Nothing in this section may prevent a law enforcement agency from conducting an investigation of a report made under this section.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 100, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 18, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 8, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 27, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 213 (H.B. 1970), Sec. 2, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 1372 (S.B. 9), Sec. 14, eff. June 15, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.148, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 22, eff. September 1, 2015. Acts 2019, 86th Leg., S.B. 1231, Sec. 3, eff. Sept. 1, 2019.

Sec. 261.407. MINIMUM STANDARDS

(a) The executive commissioner by rule shall adopt minimum standards for the investigation under Section 261.401 of suspected child abuse, neglect, or exploitation in a facility.

(b) A rule or policy adopted by a state agency or institution under Section 261.401 must be consistent with the minimum standards adopted by the executive commissioner.

(c) This section does not apply to a facility under the jurisdiction of the Texas Department of Criminal Justice or the Texas Juvenile Justice Department.

Added by Acts 2001, 77th Leg., ch. 355, Sec. 5, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.149, eff. April 2, 2015.

Sec. 261.408. INFORMATION COLLECTION

(a) The executive commissioner by rule shall adopt uniform procedures for collecting information under Section 261.401, including procedures for collecting information on deaths that occur in facilities.

(b) The department shall receive and compile information on investigations in facilities. An agency submitting information to the department is responsible for ensuring the timeliness, accuracy, completeness, and retention of the agency's reports.

(c) This section does not apply to a facility under the jurisdiction of the Texas Department of Criminal Justice or the Texas Juvenile Justice Department.

Added by Acts 2001, 77th Leg., ch. 355, Sec. 5, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.150, eff. April 2, 2015.

Sec. 261.409. INVESTIGATIONS IN FACILITIES UNDER TEXAS JUVENILE JUSTICE DEPARTMENT JURISDICTION

The board of the Texas Juvenile Justice Department by rule shall adopt standards for:

(1) the investigation under Section 261.401 of suspected child abuse, neglect, or exploitation in a facility under the jurisdiction of the Texas Juvenile Justice Department; and

(2) compiling information on those investigations.

Added by Acts 2001, 77th Leg., ch. 355, Sec. 6, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 84, eff. September 1, 2015.

Sec. 261.410. REPORT OF ABUSE BY OTHER CHILDREN

(a) In this section:

(1) "Physical abuse" means:

(A) physical injury that results in substantial harm to the child requiring emergency medical treatment and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; or

(B) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child.

(2) "Sexual abuse" means:

(A) sexual conduct harmful to a child's mental, emotional, or physical welfare; or

(B) failure to make a reasonable effort to prevent sexual conduct harmful to a child.

(b) An agency that operates, licenses, certifies, or registers a facility shall require a residential child-care facility to report each incident of physical or sexual abuse committed by a child against another child.

(c) Using information received under Subsection (b), the agency that operates, licenses, certifies, or registers a facility shall, subject to the availability of funds, compile a report that includes information:

(1) regarding the number of cases of physical and sexual abuse committed by a child against another child;

(2) identifying the residential child-care facility;

(3) regarding the date each allegation of abuse was made;

(4) regarding the date each investigation was started and concluded;

(5) regarding the findings and results of each investigation; and

(6) regarding the number of children involved in each incident investigated.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.31, eff. September 1, 2005.

SUBCHAPTER F. PROTECTIVE ORDER IN CERTAIN CASES OF ABUSE OR NEGLECT

Sec. 261.501. FILING APPLICATION FOR PROTECTIVE ORDER IN CERTAIN CASES OF ABUSE OR NEGLECT

The department may file an application for a protective order for a child's protection under this subchapter on the department's own initiative or jointly with a parent, relative, or caregiver of the child who requests the filing of the application if the department:

(1) has temporary managing conservatorship of the child;

(2) determines that:

(A) the child:

(i) is a victim of abuse or neglect; or

(ii) has a history of being abused or neglected; and

(B) there is a threat of:

(i) immediate or continued abuse or neglect to the child;

(ii) someone illegally taking the child from the home in which the child is placed;

(iii) behavior that poses a threat to the caregiver with whom the child is placed; or

(iv) someone committing an act of violence against the child or the child's caregiver; and

(3) is not otherwise authorized to apply for a protective order for the child's protection under Chapter 82.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 14, eff. Sept. 1, 2017.

Section 74 of Acts 2017, 85th Leg., H.B. 7 states—

"Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general appropriations act of the 85th Legislature."

Sec. 261.502. CERTIFICATION OF FINDINGS

(a) In making the application under this subchapter, the department must certify that:

(1) the department has diligently searched for and:

(A) was unable to locate the child's parent, legal guardian, or custodian, other than the respondent to the application; or

(B) located and provided notice of the proposed application to the child's parent, legal guardian, or custodian, other than the respondent to the application; and

(2) if applicable, the relative or caregiver who is jointly filing the petition, or with whom the child would reside following an entry of the protective order, has not abused or neglected the child and does not have a history of abuse or neglect.

(b) An application for a temporary ex parte order under Section 261.503 may be filed without making the findings required by Subsection (a) if the department certifies that the department believes there is an immediate danger of abuse or neglect to the child.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 14, eff. Sept. 1, 2017.

Section 74 of Acts 2017, 85th Leg., H.B. 7 states—

"Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general appropriations act of the 85th Legislature."

Sec. 261.503. TEMPORARY EX PARTE ORDER

If the court finds from the information contained in an application for a protective order that there is an immediate danger of abuse or neglect to the child, the court, without further notice to the respondent and without a hearing, may enter a temporary ex parte order for the protection of the child.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 14, eff. Sept. 1, 2017.

Section 74 of Acts 2017, 85th Leg., H.B. 7 states—

"Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general appropriations act of the 85th Legislature."

Sec. 261.504. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER

(a) At the close of a hearing on an application for a protective order under this subchapter, the court shall find whether there are reasonable grounds to believe that:

(1) the child:

(A) is a victim of abuse or neglect; or

(B) has a history of being abused or neglected; and

(2) there is a threat of:

(A) immediate or continued abuse or neglect to the child;

(B) someone illegally taking the child from the home in which the child is placed;

(C) behavior that poses a threat to the caregiver with whom the child is placed; or

(D) someone committing an act of violence against the child or the child's caregiver.

(b) If the court makes an affirmative finding under Subsection (a), the court shall issue a protective order that includes a statement of that finding.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 14, eff. Sept. 1, 2017.

Section 74 of Acts 2017, 85th Leg., H.B. 7 states—

"Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as

amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general appropriations act of the 85th Legislature."

Sec. 261.505. APPLICATION OF OTHER LAW

To the extent applicable, except as otherwise provided by this subchapter, Title 4 applies to a protective order issued under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 14, eff. Sept. 1, 2017.

Section 74 of Acts 2017, 85th Leg., H.B. 7 states—

"Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general appropriations act of the 85th Legislature."

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 262.001. AUTHORIZED ACTIONS BY GOVERNMENTAL ENTITY

(a) A governmental entity with an interest in the child may file a suit affecting the parent-child relationship requesting an order or take possession of a child without a court order as provided by this chapter.

(b) In determining the reasonable efforts that are required to be made with respect to preventing or eliminating the need to remove a child from the child's home or to make it possible to return a child to the child's home, the child's health and safety is the paramount concern.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 10, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 29, eff. Sept. 1, 1999.

Sec. 262.002. JURISDICTION

A suit brought by a governmental entity requesting an order under this chapter may be filed in a court with jurisdiction to hear the suit in the county in which the child is found.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 11, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 30, eff. Sept. 1, 1999.

ANNOTATIONS

In re S.H., No. 13-18-00240-CV, 2018 WL 4624720 (Tex. App.—Corpus Christi Sept. 27, 2018, no pet.) (mem. op.). If one court has continuing, exclusive jurisdiction under Family Code chapter 155, a governmental entity may file suit, under certain circumstances, in the county in which the child is found. Nothing in Family Code chapter 262 authorizes the entry of a final order in an SAPCR when a chapter 155 court has continuing, exclusive jurisdiction. Once a court acquires continuing, exclusive jurisdiction over a suit, no other court has jurisdiction unless the case has been properly transferred.

Sec. 262.0022. REVIEW OF PLACEMENT; FINDINGS

At each hearing under this chapter, the court shall review the placement of each child in the temporary or permanent managing conservatorship of the Department of Family and Protective Services who is not placed with a relative caregiver or designated caregiver as defined by Section 264.751. The court shall include in its findings a statement on whether the department:

(1) asked the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative caregiver or designated caregiver for the child; and

2. has the option of placing the child with a relative **caregiver** or ~~other~~ designated caregiver.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 15, eff. Sept. 1, 2017. Amended by Acts 2019, 86th Leg., H.B. 3390, Sec. 5, eff. May 27, 2019.

Sec. 262.003. CIVIL LIABILITY

A person who takes possession of a child without a court order is immune from civil liability if, at the time possession is taken, there is reasonable cause to believe there is an immediate danger to the physical health or safety of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

ANNOTATIONS

In re Mayorga, 538 S.W.3d 174 (Tex. App.—El Paso 2017, no pet.). This section provides immunity for civil liability, but not a defense to a motion for criminal contempt.

Albright v. Texas Department of Human Services, 859 S.W.2d 575 (Tex. App.—Houston [1st Dist.] 1993, no writ). Social worker who acted in good faith and with reasonable cause to investigate possible abuse is immune from liability.

Sec. 262.004. ACCEPTING VOLUNTARY DELIVERY OF POSSESSION OF CHILD

A law enforcement officer or a juvenile probation officer may take possession of a child without a court order on the voluntary delivery of the child by the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 101, eff. Sept. 1, 1995.

Sec. 262.005. FILING PETITION AFTER ACCEPTING VOLUNTARY DELIVERY OF POSSESSION OF CHILD

When possession of the child has been acquired through voluntary delivery of the child to a law enforcement officer or juvenile probation officer, the law enforcement officer or juvenile probation officer taking the child into possession shall cause a suit to be filed not later than the 60th day after the date the child is taken into possession.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 102, eff. Sept. 1, 1995.

Sec. 262.006. LIVING CHILD AFTER ABORTION

(a) An authorized representative of the Department of Family and Protective Services may assume the care, control, and custody of a child born alive as the result of an abortion as defined by Chapter 161.

(b) The department shall file a suit and request an emergency order under this chapter.

(c) A child for whom possession is assumed under this section need not be delivered to the court except on the order of the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.151, eff. April 2, 2015.

Sec. 262.007. POSSESSION AND DELIVERY OF MISSING CHILD

(a) A law enforcement officer who, during a criminal investigation relating to a child's custody, discovers that a child is a missing child and believes that a person may flee with or conceal the child shall take possession of the child and provide for the delivery of the child as provided by Subsection (b).

(b) An officer who takes possession of a child under Subsection (a) shall deliver or arrange for the delivery of the child to a person entitled to possession of the child.

(c) If a person entitled to possession of the child is not immediately available to take possession of the child, the law enforcement officer shall deliver the child to the Department of Family and Protective Services. Until a person entitled to possession of the child takes possession of the child, the department may, without a court order, retain possession of the child not longer than five days after the date the child is delivered to the department. While the department retains possession of a child under this subsection, the department may place the child in foster care. If a parent or other person entitled to possession of the child does not take possession of the child before the sixth day after the date the child is delivered to the department, the department shall proceed under this chapter as if the law enforcement officer took possession of the child under Section 262.104.

Added by Acts 1995, 74th Leg., ch. 776, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 685, Sec. 6, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1150, Sec. 12, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 31, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.152, eff. April 2, 2015.

Sec. 262.008. ABANDONED CHILDREN

(a) An authorized representative of the Department of Family and Protective Services may assume the care, control, and custody of a child:

(1) who is abandoned without identification or a means for identifying the child; and

(2) whose identity cannot be ascertained by the exercise of reasonable diligence.

(b) The department shall immediately file a suit to terminate the parent-child relationship of a child under Subsection (a).

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 1.203(5), eff. April 2, 2015.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 4, eff. Jan. 1, 1998. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.153, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.203(5), eff. April 2, 2015.

Sec. 262.009. TEMPORARY CARE OF CHILD TAKEN INTO POSSESSION

An employee of or volunteer with a law enforcement agency who successfully completes a background and criminal history check approved by the law enforcement agency may assist a law enforcement officer or juvenile probation officer with the temporary care of a child who is taken into possession by a governmental entity without a court order under this chapter until further arrangements regarding the custody of the child can be made.

Added by Acts 2003, 78th Leg., ch. 970, Sec. 1, eff. June 20, 2003.

Sec. 262.010. CHILD WITH SEXUALLY TRANSMITTED DISEASE

(a) If during an investigation by the Department of Family and Protective Services the department discovers that a child younger than 11 years of age has a sexually transmitted disease, the department shall:

(1) appoint a special investigator to assist in the investigation of the case; and

(2) file an original suit requesting an emergency order under this chapter for possession of the child unless the department determines, after taking the following actions, that emergency removal is not necessary for the protection of the child:

(A) reviewing the medical evidence to determine whether the medical evidence supports a finding that abuse likely occurred;

(B) interviewing the child and other persons residing in the child's home;

(C) conferring with law enforcement;

(D) determining whether any other child in the home has a sexually transmitted disease and, if so, referring the child for a sexual abuse examination;

(E) if the department determines a forensic interview is appropriate based on the child's age and development, ensuring that each child alleged to have been abused undergoes a forensic interview by a children's advocacy center established under Section 264.402 or another professional with specialized training in conducting forensic interviews if a children's advocacy center is not available in the county in which the child resides;

(F) consulting with a department staff nurse or other medical expert to obtain additional information regarding the nature of the sexually transmitted disease and the ways the disease is transmitted and an opinion as to whether abuse occurred based on the facts of the case;

(G) contacting any additional witness who may have information relevant to the investigation, including other individuals who had access to the child; and

(H) if the department determines after taking the actions described by Paragraphs (A)–(G) that a finding of sexual abuse is not supported, obtaining an opinion from the Forensic Assessment Center Network as to whether the evidence in the case supports a finding that abuse likely occurred.

(b) If the department determines that abuse likely occurred, the department shall work with law enforcement to obtain a search warrant to require an individual the department reasonably believes may have sexually abused the child to undergo medically appropriate diagnostic testing for sexually transmitted diseases.

Added by Acts 2011, 82nd Leg., R.S., Ch. 598 (S.B. 218), Sec. 2, eff. September 1, 2011.

Sec. 262.011. PLACEMENT IN SECURE AGENCY FOSTER HOME

A court in an emergency, initial, or full adversary hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure agency foster home verified in accordance with Section 42.0531, Human Resources Code, if the court finds that:

(1) the placement is in the best interest of the child; and

(2) the child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Section 20A.02 or 20A.03, Penal Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 338 (H.B. 418), Sec. 1, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 16, eff. Sept. 1, 2017.

Sec. 262.012. SEALING OF COURT RECORDS FILED ELECTRONICALLY

For purposes of determining whether to seal documents in accordance with Rule 76a, Texas Rules of Civil Procedure, in a suit under this subtitle, the court shall consider documents filed through an electronic filing system in the same manner as any other document filed with the court.

Added by Acts 2015, 84th Leg., R.S., Ch. 455 (H.B. 331), Sec. 1, eff. June 15, 2015. Redesignated from Sec. 262.011 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(8), eff. September 1, 2017.

Sec. 262.013. VOLUNTARY TEMPORARY MANAGING CONSERVATORSHIP

In a suit affecting the parent-child relationship filed by the Department of Family and Protective Services, the existence of a parent's voluntary agreement to temporarily place the parent's child in the managing conservatorship of the department is not an admission by the parent that the parent engaged in conduct that endangered the child.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 17, eff. Sept. 1, 2017.

Sec. 262.014. DISCLOSURE OF CERTAIN EVIDENCE

On the request of the attorney for a parent who is a party in a suit affecting the parent-child relationship filed under this chapter, or the attorney ad litem for the parent's child, the Department of Family and Protective Services shall, before the full adversary hearing, provide:

(1) the name of any person, excluding a department employee, whom the department will call as a witness to any of the allegations contained in the petition filed by the department;

(2) a copy of any offense report relating to the allegations contained in the petition filed by the department that will be used in court to refresh a witness's memory; and

(3) a copy of any photograph, video, or recording that will be presented as evidence.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 17, eff. Sept. 1, 2017.

Sec. 262.015. FILING REQUIREMENT FOR PETITION REGARDING MORE THAN ONE CHILD

Each suit under this chapter based on allegations of abuse or neglect arising from the same incident or occurrence and involving children that live in the same home must be filed in the same court.

Added by Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 3, eff. Sept. 1, 2017. Redesignated from Sec. 262.013 by Acts 2019, 86th Leg., H.B. 4170, Sec. 21.001(15), eff. Sept. 1, 2019.

SUBCHAPTER B. TAKING POSSESSION OF CHILD

Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF CHILD

An original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must 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) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;

(2) continuation in the home would be contrary to the child's welfare;

(3) there is no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C; and

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

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 103, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 752, Sec. 1, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 14, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 33, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 849, Sec. 1, eff. Sept. 1, 2001. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 4, eff. Sept. 1, 2017.

Sec. 262.1015. Removal of Alleged Perpetrator; Offense

(a) If the Department of Family and Protective Services determines after an investigation that child abuse has occurred and that the child would be protected in the child's home by the removal of the alleged perpetrator of the abuse, the department shall file a petition for the removal of the alleged perpetrator from the residence of the child rather than attempt to remove the child from the residence.

(a–1) Notwithstanding Subsection (a), if the Department of Family and Protective Services determines that a protective order issued under Title 4 provides a reasonable alternative to obtaining an order under that subsection, the department may:

(1) file an application for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order under this section; or

(2) assist a parent or other adult with whom a child resides in obtaining a protective order.

(b) A court may issue a temporary restraining order in a suit by the department for the removal of an alleged perpetrator under Subsection (a) if the department's petition states facts sufficient to satisfy the court that:

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

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing;

(3) the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the residence of the child;

(4) the parent or other adult with whom the child will continue to reside in the child's home is likely to:

(A) make a reasonable effort to monitor the residence; and

(B) report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence; and

(5) the issuance of the order is in the best interest of the child.

(c) The order shall be served on the alleged perpetrator and on the parent or other adult with whom the child will continue to reside.

(d) A temporary restraining order under this section expires not later than the 14th day after the date the order was rendered, unless the court grants an extension under Section 262.201(e).

(e) A temporary restraining order under this section and any other order requiring the removal of an alleged perpetrator from the residence of a child shall require that the parent or other adult with whom the child will continue to reside in the child's home make a reasonable effort to monitor the residence and report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence.

(f) The court shall order the removal of an alleged perpetrator if the court finds that the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the child's residence and that:

(1) the presence of the alleged perpetrator in the child's residence constitutes a continuing danger to the physical health or safety of the child; or

(2) the child has been the victim of sexual abuse and there is a substantial risk that the child will be the victim of sexual abuse in the future if the alleged perpetrator remains in the residence.

(g) A person commits an offense if the person is a parent or other person with whom a child resides, the person is served with an order containing the requirement specified by Subsection (e), and the person fails to make a reasonable effort to monitor the residence of the child or to report to the department and the appropriate law enforcement agency an attempt by the alleged perpetrator to return to the residence. An offense under this section is a Class A misdemeanor.

(h) A person commits an offense if, in violation of a court order under this section, the person returns to the residence of the child the person is alleged to have abused. An offense under this subsection is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this subsection.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 4, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 19, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 222 (H.B. 253), Sec. 2, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 598 (S.B. 218), Sec. 3, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 6, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.154, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 5, eff. Sept. 1, 2017.

Sec. 262.102. EMERGENCY ORDER AUTHORIZING POSSESSION OF CHILD

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

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

(2) continuation in the home would be contrary to the child's welfare;

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

(4) 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.

(b) In determining whether there is an immediate danger to the physical health or safety of a child, the court may consider whether the child's household includes a person who has:

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

(2) sexually abused another child.

(c) If, based on the recommendation of or a request by the Department of Family and Protective Services, the court finds that child abuse or neglect has occurred and that the child requires protection from family violence by a member of the child's family or household, the court shall render a temporary order under Title 4 for the protection of the child. In this subsection, "family violence" has the meaning assigned by Section 71.004.

(d) The temporary order, temporary restraining order, or attachment of a child rendered by the court under Subsection (a) must contain the following statement prominently displayed in boldface type, capital letters, or underlined:

"YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY, THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 104, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 752, Sec. 2, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 15, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 34, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 849, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(m), eff. Sept. 1, 2003. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 7, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.155, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 6, eff. Sept. 1, 2017.

Sec. 262.103. DURATION OF TEMPORARY ORDER, TEMPORARY RESTRAINING ORDER, AND ATTACHMENT

A temporary order, temporary restraining order, or attachment of the child issued under Section 262.102(a) expires not later than 14 days after the date it is issued unless it is extended as provided by the Texas Rules of Civil Procedure or Section 262.201(e).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 8, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.156, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 7, eff. Sept. 1, 2017.

Sec. 262.104. TAKING POSSESSION OF A CHILD IN EMERGENCY WITHOUT A COURT ORDER

(a) If there is no time to obtain a temporary order, temporary restraining order, or attachment under Section 262.102(a) before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective Services, a law enforcement

officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions, only:

(1) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(2) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(3) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code;

(4) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code; or

(5) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child.

(b) An authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child under Subsection (a) on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 20, eff. Sept. 1, 1997. Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 2, eff. August 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.157, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 338 (H.B. 418), Sec. 2, eff. September 1, 2015.

Sec. 262.105. FILING PETITION AFTER TAKING POSSESSION OF CHILD IN EMERGENCY

(a) When a child is taken into possession without a court order, the person taking the child into possession, without unnecessary delay, shall:

(1) file a suit affecting the parent-child relationship;

(2) request the court to appoint an attorney ad litem for the child; and

(3) request an initial hearing to be held by no later than the first business day after the date the child is taken into possession.

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

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

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

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

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

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

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

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

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

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

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 809, Sec. 2, eff. Sept. 1, 2001. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.158, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(13), eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 8, eff. Sept. 1, 2017.

Sec. 262.106. INITIAL HEARING AFTER TAKING POSSESSION OF CHILD IN EMERGENCY WITHOUT COURT ORDER

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

(b) The initial hearing may be ex parte and proof may be by sworn petition or affidavit if a full adversary hearing is not practicable.

(c) If the initial hearing is not held within the time required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

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

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 16, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 35, eff. Sept. 1, 1999. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.159, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 9, eff. Sept. 1, 2017.

Sec. 262.107. STANDARD FOR DECISION AT INITIAL HEARING AFTER TAKING POSSESSION OF CHILD WITHOUT A COURT ORDER IN EMERGENCY

(a) The court shall 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 is satisfied that:

(1) the evidence shows that one of the following circumstances exists:

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

(B) the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;

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

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

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

(3) 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.

(b) In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which the child would be returned includes a person who has:

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

(2) sexually abused another child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 105, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 849, Sec. 3, eff. Sept. 1, 2001. Acts 2015, 84th Leg., R.S., Ch. 338 (H.B. 418), Sec. 3, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 10, eff. Sept. 1, 2017.

ANNOTATIONS

In re Justin M., 549 S.W.3d 330 (Tex. App.—Texarkana 2018, orig. proceeding). The initial hearing is held so that the trial court can review the appropriateness of the initial removal and issue a temporary order.

Sec. 262.108. UNACCEPTABLE FACILITIES FOR HOUSING CHILD

When a child is taken into possession under this chapter, that child may not be held in isolation or in a jail, juvenile detention facility, or other secure detention facility.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 1374, Sec. 9, eff. Sept. 1, 1997.

Sec. 262.109. NOTICE TO PARENT, CONSERVATOR, OR GUARDIAN

(a) The Department of Family and Protective Services or other agency must give written notice as prescribed by this section to each parent of the child or to the child's conservator or legal guardian when a representative of the department or other agency takes possession of a child under this chapter.

(b) The written notice must be given as soon as practicable, but in any event not later than the first business day after the date the child is taken into possession.

(c) The written notice must include:

(1) the reasons why the department or agency is taking possession of the child and the facts that led the department to believe that the child should be taken into custody;

(2) the name of the person at the department or agency that the parent, conservator, or other custodian may contact for information relating to the child or a legal proceeding relating to the child;

(3) a summary of legal rights of a parent, conservator, guardian, or other custodian under this chapter and an explanation of the probable legal procedures relating to the child; and

(4) a statement that the parent, conservator, or other custodian has the right to hire an attorney.

(d) The written notice may be waived by the court at the initial hearing:

(1) on a showing that:

(A) the parents, conservators, or other custodians of the child could not be located; or

(B) the department took possession of the child under Subchapter D; or

(2) for other good cause.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 76, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 1150, Sec. 17, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 36, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 809, Sec. 3, eff. Sept. 1, 2001. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.160, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 11, eff. Sept. 1, 2017.

Sec. 262.1095. INFORMATION PROVIDED TO RELATIVES AND CERTAIN INDIVIDUALS; INVESTIGATION

(a) When the Department of Family and Protective Services or another agency takes possession of a child under this chapter, the department:

(1) shall provide information as prescribed by this section to each adult the department is able to identify and locate who is:

(A) related to the child within the third degree by consanguinity as determined under Chapter 573, Government Code;

(B) an adult relative of the alleged father of the child if the department has a reasonable basis to believe the alleged father is the child's biological father; or

(C) identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307; and

(2) may provide information as prescribed by this section to each adult the department is able to identify and locate who has a long-standing and significant relationship with the child.

(b) The information provided under Subsection (a) must:

(1) state that the child has been removed from the child's home and is in the temporary managing conservatorship of the department;

(2) explain the options available to the individual to participate in the care and placement of the child and the support of the child's family;

(3) state that some options available to the individual may be lost if the individual fails to respond in a timely manner; and

(4) include, if applicable, the date, time, and location of the hearing under Subchapter C, Chapter 263.

(c) The department is not required to provide information to an individual if the individual has received service of citation under Section 102.009 or if the department determines providing information is inappropriate because the individual has a criminal history or a history of family violence.

(d) The department shall use due diligence to identify and locate all individuals described by Subsection (a) not later than the 30th day after the date the department files a suit affecting the parent-child relationship. In order to identify and locate the individuals described by Subsection (a), the department shall seek information from:

(1) each parent, relative, and alleged father of the child; and

(2) the child in an age-appropriate manner.

(e) The failure of a parent or alleged father of the child to complete the proposed child placement resources form does not relieve the department of its duty to seek information about the person under Subsection (d).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 2, eff. September 1, 2011. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 23, eff. September 1, 2015.

Sec. 262.110. TAKING POSSESSION OF CHILD IN EMERGENCY WITH INTENT TO RETURN HOME

(a) An authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take temporary possession of a child without a court order on discovery of a child in a situation of danger to the child's physical health or safety when the sole purpose is to deliver the child without unnecessary delay to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

(b) Until a parent or other person entitled to possession of the child takes possession of the child, the department may retain possession of the child without a court order for not more than five days. On the expiration of the fifth day, if a parent or other person entitled to possession does not take possession of the child, the department shall take action under this chapter as if the department took possession of the child under Section 262.104.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 18, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 37, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.161, eff. April 2, 2015.

Sec. 262.112. EXPEDITED HEARING AND APPEAL

(a) The Department of Family and Protective Services is entitled to an expedited hearing under this chapter in any proceeding in which a hearing is required if the department determines that a child should be removed from the child's home because of an immediate danger to the physical health or safety of the child.

(b) In any proceeding in which an expedited hearing is held under Subsection (a), the department, parent, 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.

(c) If a child is returned to the child's home after a removal in which the department was entitled to an expedited hearing under this section and the child is the subject of a subsequent allegation of abuse or neglect, the department 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 in the manner provided by Subsection (b).

Added by Acts 1995, 74th Leg., ch. 943, Sec. 1, eff. Sept. 1, 1995. Renumbered from Family Code Sec. 262.111 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(29), eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.162, eff. April 2, 2015.

Sec. 262.113. FILING SUIT WITHOUT TAKING POSSESSION OF CHILD

An original suit filed by a governmental entity that requests to take possession of a child after notice and a hearing must 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) 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 of the child and that allowing the child to remain in the home would be contrary to the child's welfare; and

(2) reasonable efforts, consistent with the circumstances and providing for the safety of the child, have been made to prevent or eliminate the need to remove the child from the child's home.

Added by Acts 1999, 76th Leg., ch. 1150, Sec. 19, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 38, eff. Sept. 1, 1999. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 18, eff. Sept. 1, 2017.

ANNOTATIONS

In re A.M., No. 13-18-00527-CV, 2019 WL 1187154 (Tex. App.—Corpus Christi Mar. 14, 2019, no pet.) (mem. op.). A party's complaint about the sufficiency of the affidavit must be challenged immediately or it becomes moot.

Sec. 262.1131. TEMPORARY RESTRAINING ORDER BEFORE FULL ADVERSARY HEARING

In a suit filed under Section 262.113, the court may render a temporary restraining order as provided by Section 105.001.

Added by Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 12, eff. Sept. 1, 2017.

Sec. 262.114. EVALUATION OF IDENTIFIED RELATIVES AND OTHER DESIGNATED INDIVIDUALS; PLACEMENT

(a) Before a full adversary hearing under Subchapter C, the Department of Family and Protective Services must perform a background and criminal history check of the relatives or other designated individuals identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307, **including any adult identified by the child**. The department shall evaluate each person listed on the form to determine the relative or other designated individual who would be the most appropriate substitute caregiver for the child and must complete a home study of the most appropriate substitute caregiver, if any, before the full adversary hearing. Until the department identifies a relative or other designated individual qualified to be a substitute caregiver, the department must continue to explore substitute caregiver options, **including asking the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child**. The time frames in this subsection do not apply to a relative or other designated individual located in another state.

(a–1) At the full adversary hearing under Section 262.201, the department shall, after redacting any social security numbers, file with the court:

(1) a copy of each proposed child placement resources form completed by the parent or other person having legal custody of the child;

(2) a copy of any completed home study performed under Subsection (a); and

(3) the name of the relative or other designated caregiver, if any, with whom the child has been placed.

(a–2) If the child has not been placed with a relative or other designated caregiver by the time of the full adversary hearing under Section 262.201, the department shall file with the court a statement that explains:

(1) the reasons why the department has not placed the child with a relative or other designated caregiver listed on the proposed child placement resources form, **including any adult identified by the child**; and

(2) the actions the department is taking, if any, to place the child with a relative or other designated caregiver.

(b) The department may place a child with a relative or other designated caregiver identified on the proposed child placement resources form, **including any adult identified by the child,** if the department determines that the placement is in the best interest of the child. The department must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver's home before the child is placed with the relative or other designated caregiver. The department may place the child with the relative or designated caregiver before conducting the home study required under Subsection (a). Not later than 48 hours after the time that the child is placed with the relative or other designated caregiver, the department shall begin the home study of the relative or

other designated caregiver. The department shall complete the home study as soon as possible unless otherwise ordered by a court. The department shall provide a copy of an informational manual required under Section 261.3071 to the relative or other designated caregiver at the time of the child's placement.

(c) The department shall consider placing a child who has previously been in the managing conservatorship of the department with a foster parent with whom the child previously resided if:

(1) the department determines that placement of the child with a relative or designated caregiver is not in the child's best interest; and

(2) the placement is available and in the child's best interest.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.33, eff. September 1, 2005. Amended by: Acts 2009, 81st Leg., R.S., Ch. 527 (S.B. 1332), Sec. 1, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 856 (S.B. 2385), Sec. 1, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 24, eff. September 1, 2015. Acts 2019, 86th Leg., H.B. 3390, Sec. 6, eff. May 27, 2019.

ANNOTATIONS

In re R.H., No. 10-17-00054-CV, 2017 WL 4293268 (Tex. App.—Waco Sept. 27, 2017, pet. denied) (mem. op.). Failure to conduct a home study does not prevent TDFPS from moving forward with termination.

Sec. 262.115. VISITATION WITH CERTAIN CHILDREN; TEMPORARY VISITATION SCHEDULE

(a) In this section, "department" means the Department of Family and Protective Services.

(b) This section applies only to a child:

(1) who is in the temporary managing conservatorship of the department; and

(2) for whom the department's goal is reunification of the child with the child's parent.

(c) The department shall ensure that a parent who is otherwise entitled to possession of the child has an opportunity to visit the child not later than the fifth day after the date the department is named temporary managing conservator of the child unless:

(1) the department determines that visitation is not in the child's best interest; or

(2) visitation with the parent would conflict with a court order relating to possession of or access to the child.

(d) Before a hearing conducted under Subchapter C, the department in collaboration with each parent of the child must develop a temporary visitation schedule for the child's visits with each parent. The visitation schedule may conform to the department's minimum visitation policies. The department shall consider the factors listed in Section 263.107(c) in developing the temporary visitation schedule. Unless modified by court order, the schedule remains in effect until a visitation plan is developed under Section 263.107.

(e) The department may include the temporary visitation schedule in any report the department submits to the court before or during a hearing under Subchapter C. The court may render any necessary order regarding the temporary visitation schedule.

Added by Acts 2013, 83rd Leg., R.S., Ch. 191 (S.B. 352), Sec. 1, eff. September 1, 2013. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 25, eff. September 1, 2015.

Sec. 262.116. LIMITS ON REMOVAL

(a) The Department of Family and Protective Services may not take possession of a child under this subchapter based on evidence that the parent:

(1) homeschooled the child;

(2) is economically disadvantaged;

(3) has been charged with a nonviolent misdemeanor offense other than:

(A) an offense under Title 5, Penal Code;

(B) an offense under Title 6, Penal Code; or

(C) an offense that involves family violence, as defined by Section 71.004 of this code;

(4) provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or

(5) declined immunization for the child for reasons of conscience, including a religious belief.

(b) The department shall train child protective services caseworkers regarding the prohibitions on removal provided under Subsection (a).

(c) The executive commissioner of the Health and Human Services Commission may adopt rules to implement this section.

(d) This section does not prohibit the department from gathering or offering evidence described by Subsection (a) as part of an action to take possession of a child under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 19, eff. Sept. 1, 2017.

SUBCHAPTER C. ADVERSARY HEARING

Sec. 262.201. FULL ADVERSARY HEARING; FINDINGS OF THE COURT

(a) In a suit filed under Section 262.101 or 262.105, unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension under Subsection (e) or (e–1).

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

(c) Before commencement of the full adversary hearing, the court must inform each parent not represented by an attorney of:

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

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

(d) If a parent claims indigence and requests the appointment of an attorney before the full adversary hearing, the court shall require the parent to complete and file with the court an affidavit of indigence. The court may 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. If the appointment of an attorney for the parent is requested, the court shall make a determination of indigence before commencement of the full adversary hearing. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent.

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

(e–1) If a parent who is not indigent appears in opposition to the suit, the court may, for good cause shown, postpone the full adversary hearing for not more than seven days from the date of the parent's appearance to allow the parent to hire an attorney or to provide the parent's attorney time to respond to the petition and prepare for the hearing. A postponement under this subsection is subject to the limits and requirements prescribed by Subsection (e) **and Section 155.207**.

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

(g) In a suit filed under Section 262.101 or 262.105, at the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

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

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

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

(h) In 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 home is contrary to the welfare of the child, the court shall issue an appropriate temporary order under Chapter 105.

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

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

(2) has sexually abused another child.

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

(1) 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 of the child and continuation of the child in the home would be contrary to the child's welfare; and

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

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

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

(l–1) The court shall ask all parties present at the full adversary hearing whether:

(1) the child has had the opportunity, in a developmentally appropriate manner, to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child; and

(2) each individual identified by the child as a potential relative or designated caregiver is listed on the proposed child placement resources form.

(m) The court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

(n) The court shall 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.

(n–1) For a child placed with a relative of the child, the court shall inform the relative of:

(1) the option to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and

(2) the permanency care assistance program under Subchapter K, Chapter 264.

(o) When citation by publication is needed for a parent or alleged or probable father in an action brought under this chapter because the location of the parent, alleged father, or probable father is unknown, the court may render a temporary order without delay at any time after the filing of the action without regard to whether notice of the citation by publication has been published.

(p) For the purpose of determining under Subsection (a) the 14th day after the date the child is taken into possession, a child is considered to have been taken into possession by the Department of Family and Protective Services on the expiration of the five-day period permitted under Section 262.007(c) or 262.110(b), as appropriate.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 107, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 600, Sec.

5, eff. Jan, 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 1, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch; 752, Sec. 3, eff. June 17, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 77, eff; Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 78, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.31, eff; Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1150, Sec. 20, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch; 1390, Sec. 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 306, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 849, Sec. 4, eff. Sept. 1, 2001. Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.34(a), eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 856 (S.B. 2385), Sec. 2, eff. September 1, 2009. Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 9, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.163, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 128 (S.B. 1931), Sec. 3, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 338 (H.B. 418), Sec. 4, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 697 (H.B. 825), Sec. 1, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 13, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 20, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 1884, Sec. 2, eff. Sept. 1, 2019. Acts 2019, 86th Leg., H.B. 3390, Sec. 7, eff. May 27, 2019. Acts 2019, 86th Leg., H.B. 4170, Sec. 7.004, eff. Sept. 1, 2019.

ANNOTATIONS

In re A.E., No. 12-17-00155-CV, 2017 WL 5167552 (Tex. App.—Tyler Nov. 8, 2017, orig. proceeding) (mem. op.). Where court held adversary hearing and pronounced TDFPS as temporary managing conservator and parents as possessory conservators, the act of committing the order to writing and signing was a ministerial act and did not necessitate dismissal of the case.

In re J.M.C., 109 S.W.3d 591 (Tex. App.—Fort Worth 2003, no pet.). The fourteen-day deadline for holding a full adversary hearing is procedural and not jurisdictional.

Sec. 262.2015. AGGRAVATED CIRCUMSTANCES

(a) The court may waive the requirement of a service plan and the requirement to make reasonable efforts to return the child to a parent and may accelerate the trial schedule to result in a final order for a child under the care of the Department of Family and Protective Services at an earlier date than provided by Subchapter D, Chapter 263, if the court finds that the parent has subjected the child to aggravated circumstances.

(b) The court may find under Subsection (a) that a parent has subjected the child to aggravated circumstances if:

(1) the parent abandoned the child without identification or a means for identifying the child;

(2) the child or another child of the parent is a victim of serious bodily injury or sexual abuse inflicted by the parent or by another person with the parent's consent;

(3) the parent has engaged in conduct against the child or another child of the parent that would constitute an offense under the following provisions of the Penal Code:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 19.04 (manslaughter);

(D) Section 21.11 (indecency with a child);

(E) Section 22.011 (sexual assault);

(F) Section 22.02 (aggravated assault);

(G) Section 22.021 (aggravated sexual assault);

(H) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(I) Section 22.041 (abandoning or endangering child);

(J) Section 25.02 (prohibited sexual conduct);

(K) Section 43.25 (sexual performance by a child);

(L) Section 43.26 (possession or promotion of child pornography);

(M) Section 21.02 (continuous sexual abuse of young child or children);

(N) Section 43.05(a)(2) (compelling prostitution); or

(O) Section 20A.02(a)(7) or (8) (trafficking of persons);

(4) the parent voluntarily left the child alone or in the possession of another person not the parent of the child for at least six months without expressing an intent to return and without providing adequate support for the child;

(5) the parent's parental rights with regard to another child have been involuntarily terminated based on a finding that the parent's conduct violated Section 161.001(b)(1)(D) or (E) or a substantially equivalent provision of another state's law;

(6) the parent has been convicted for:

(A) the murder of another child of the parent and the offense would have been an offense under 18 U.S.C. Section 1111(a) if the offense had occurred in the special maritime or territorial jurisdiction of the United States;

(B) the voluntary manslaughter of another child of the parent and the offense would have been an offense under 18 U.S.C. Section 1112(a) if the offense had occurred in the special maritime or territorial jurisdiction of the United States;

(C) aiding or abetting, attempting, conspiring, or soliciting an offense under Paragraph (A) or (B); or

(D) the felony assault of the child or another child of the parent that resulted in serious bodily injury to the child or another child of the parent;

(7) the parent's parental rights with regard to another child of the parent have been involuntarily terminated; or

(8) the parent is required under any state or federal law to register with a sex offender registry.

(c) On finding that reasonable efforts to make it possible for the child to safely return to the child's home are not required, the court shall at any time before the 30th day after the date of the finding, conduct an initial permanency hearing under Subchapter D, Chapter 263. Separate notice of the permanency plan is not required but may be given with a notice of a hearing under this section.

(d) The Department of Family and Protective Services shall make reasonable efforts to finalize the permanent placement of a child for whom the court has made the finding described by Subsection (c). The court shall set the suit for trial on the merits as required by Subchapter D, Chapter 263, in order to facilitate final placement of the child.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 79, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 40, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 849, Sec. 5, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.35, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.33, eff. September 1, 2007. Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 4.04, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.164, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 26, eff. September 1, 2015.

Sec. 262.202. IDENTIFICATION OF COURT OF CONTINUING, EXCLUSIVE JURISDICTION

If at the conclusion of the full adversary hearing the court renders a temporary order, the governmental entity shall request identification of a court of continuing, exclusive jurisdiction as provided by Chapter 155.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 262.203. TRANSFER OF SUIT

(a) On the motion of a party or the court's own motion, if applicable, the court that rendered the temporary order shall in accordance with procedures provided by Chapter 155:

(1) transfer the suit to the court of continuing, exclusive jurisdiction, if any, within the time required by Section 155.207(a), if the court finds that the transfer is:

(A) necessary for the convenience of the parties; and

(B) in the best interest of the child;

(2) order transfer of the suit from the court of continuing, exclusive jurisdiction; or

(3) if grounds exist for transfer based on improper venue, order transfer of the suit to the court having venue of the suit under Chapter 103.

(b) Notwithstanding Section 155.204, a motion to transfer relating to a suit filed under this chapter may be filed separately from the petition and is timely if filed while the case is pending.

(c) Notwithstanding Sections 6.407 and 103.002, a court exercising jurisdiction under this chapter is not required to transfer the suit to a court in which a parent has filed a suit for dissolution of marriage before a final order for the protection of the child has been rendered under Subchapter E, Chapter 263.

(d) An order of transfer must include:

(1) the date of any future hearings in the case that have been scheduled by the transferring court;

(2) any date scheduled by the transferring court for the dismissal of the suit under Section 263.401; and

(3) the name and contact information of each attorney ad litem or guardian ad litem appointed in the suit.

(e) The court to which a suit is transferred may retain an attorney ad litem or guardian ad litem appointed by the transferring court. If the court finds that the appointment of a new attorney ad litem or guardian ad litem is appropriate, the court shall appoint that attorney ad litem or guardian ad litem before the earlier of:

(1) the 10th day after the date of receiving the order of transfer; or

(2) the date of the first scheduled hearing after the transfer.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 22, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 41, eff. Sept. 1, 1999. Acts 2015, 84th Leg., R.S., Ch. 211 (S.B. 1929), Sec. 2, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 21, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 572 (S.B. 738), Sec. 3, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 910 (S.B. 999), Sec. 14, eff. Sept. 1, 2017.

Section 5 of Acts 2017, 85th Leg., S.B. 738 states—

"This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature."

ANNOTATIONS

In re L.S., 557 S.W.3d. 736 (Tex. App.—Fort Worth 2018, no pet.). Trial court lacked jurisdiction and order terminating parent's rights was vacated.

In re S.H., No. 13-18-00240-CV, 2018 WL 4624720 (Tex. App.—Corpus Christi Sept. 27, 2018, no pet.) (mem. op.). If a case is not properly transferred then any resulting final order may be void, including an order terminating a parent's rights.

Sec. 262.204. TEMPORARY ORDER IN EFFECT UNTIL SUPERSEDED

(a) A temporary order rendered under this chapter is valid and enforceable until properly superseded by a court with jurisdiction to do so.

(b) A court to which the suit has been transferred may enforce by contempt or otherwise a temporary order properly issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 262.206. EX PARTE HEARINGS PROHIBITED

Unless otherwise authorized by this chapter or other law, a hearing held by a court in a suit under this chapter may not be ex parte.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 22, eff. Sept. 1, 2017.

Section 74 of Acts 2017, 85th Leg., H.B. 7 states—

"Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general appropriations act of the 85th Legislature."

SUBCHAPTER D. EMERGENCY POSSESSION OF CERTAIN ABANDONED CHILDREN

Sec. 262.301. DEFINITIONS

In this chapter:

(1) "Designated emergency infant care provider" means:

(A) an emergency medical services provider;

(B) a hospital;

(C) a freestanding emergency medical care facility licensed under Chapter 254, Health and Safety Code; or

(D) a child-placing agency licensed by the Department of Family and Protective Services under Chapter 42, Human Resources Code, that:

(i) agrees to act as a designated emergency infant care provider under this subchapter; and

(ii) has on staff a person who is licensed as a registered nurse under Chapter 301, Occupations Code, or who provides emergency medical services under Chapter 773, Health and Safety Code, and who will examine and provide emergency medical services to a child taken into possession by the agency under this subchapter.

(2) "Emergency medical services provider" has the meaning assigned that term by Section 773.003, Health and Safety Code.

Amended by Acts 2001, 77th Leg., ch. 809, Sec. 4, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.165, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 260 (S.B. 1279), Sec. 1, eff. September 1, 2015.

Sec. 262.302. ACCEPTING POSSESSION OF CERTAIN ABANDONED CHILDREN

(a) A designated emergency infant care provider shall, without a court order, take possession of a child who appears to be 60 days old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

(b) A designated emergency infant care provider who takes possession of a child under this section has no legal duty to detain or pursue the parent and may not do so unless the child appears to have been abused or neglected. The designated emergency infant care provider has no legal duty to ascertain the parent's identity and the parent may remain anonymous. However, the parent may be given a form for voluntary disclosure of the child's medical facts and history.

(c) A designated emergency infant care provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child. The designated emergency infant care provider is not liable for damages related to the provider's taking possession of, examining, or treating the child, except for damages related to the provider's negligence.

Amended by Acts 2001, 77th Leg., ch. 809, Sec. 4, eff. Sept. 1, 2001.

Sec. 262.303. NOTIFICATION OF POSSESSION OF ABANDONED CHILD

(a) Not later than the close of the first business day after the date on which a designated emergency infant care provider takes possession of a child under Section 262.302, the provider shall notify the Department of Family and Protective Services that the provider has taken possession of the child.

(b) The department shall assume the care, control, and custody of the child immediately on receipt of notice under Subsection (a).

Amended by Acts 2001, 77th Leg., ch. 809, Sec. 4, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.166, eff. April 2, 2015.

Sec. 262.304. FILING PETITION AFTER ACCEPTING POSSESSION OF ABANDONED CHILD

A child for whom the Department of Family and Protective Services assumes care, control, and custody under Section 262.303 shall be treated as a child taken into possession without a court order, and the department shall take action as required by Section 262.105 with regard to the child.

Amended by Acts 2001, 77th Leg., ch. 809, Sec. 4, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.167, eff. April 2, 2015.

Sec. 262.305. REPORT TO LAW ENFORCEMENT AGENCY; INVESTIGATION

(a) Immediately after assuming care, control, and custody of a child under Section 262.303, the Department of Family and Protective Services shall report the child to appropriate state and local law enforcement agencies as a potential missing child.

(b) A law enforcement agency that receives a report under Subsection (a) shall investigate whether the child is reported as missing.

Added by Acts 2001, 77th Leg., ch. 809, Sec. 4, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.168, eff. April 2, 2015.

Sec. 262.306. NOTICE

Each designated emergency infant care provider shall post in a conspicuous location a notice stating that the provider is a designated emergency infant care provider location and will accept possession of a child in accordance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 809, Sec. 4, eff. Sept. 1, 2001.

Sec. 262.307. REIMBURSEMENT FOR CARE OF ABANDONED CHILD

The Department of Family and Protective Services shall reimburse a designated emergency infant care provider that takes possession of a child under Section 262.302 for the cost to the provider of assuming the care, control, and custody of the child.

Added by Acts 2001, 77th Leg., ch. 809, Sec. 4, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.169, eff. April 2, 2015.

Sec. 262.308. CONFIDENTIALITY

(a) All identifying information, documentation, or other records regarding a person who voluntarily delivers a child to a designated emergency infant care provider under this subchapter is confidential and not subject to release to any individual or entity except as provided by Subsection (b).

(b) Any pleading or other document filed with a court under this subchapter is confidential, is not public information for purposes of Chapter 552, Government Code, and may not be released to a person other than to a party in a suit regarding the child, the party's attorney, or an attorney ad litem or guardian ad litem appointed in the suit.

(c) In a suit concerning a child for whom the Department of Family and Protective Services assumes care, control, and custody under this subchapter, the court shall close the hearing to the public unless the court finds that the interests of the child or the public would be better served by opening the hearing to the public.

(d) Unless the disclosure, receipt, or use is permitted by this section, a person commits an offense if the person knowingly discloses, receives, uses, or permits the use of information derived from records or files described by this section or knowingly discloses identifying information concerning a person

who voluntarily delivers a child to a designated emergency infant care provider. An offense under this subsection is a Class B misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 620 (H.B. 2331), Sec. 1, eff. September 1, 2005.

Sec. 262.309. SEARCH FOR RELATIVES NOT REQUIRED

The Department of Family and Protective Services is not required to conduct a search for the relatives of a child for whom the department assumes care, control, and custody under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 620 (H.B. 2331), Sec. 1, eff. September 1, 2005.

SUBCHAPTER E. RELINQUISHING CHILD TO OBTAIN CERTAIN SERVICES

Sec. 262.351. DEFINITIONS

In this subchapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Severe emotional disturbance" has the meaning assigned by Section 261.001.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1142 (S.B. 44), Sec. 3, eff. September 1, 2013.

For expiration of Subsections (b) and (c), see Subsection (c).

Sec. 262.352. JOINT MANAGING CONSERVATORSHIP OF CHILD

(a) Before the department files a suit affecting the parent-child relationship requesting managing conservatorship of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, the department must, unless it is not in the best interest of the child, discuss with the child's parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with the department.

(b) Not later than November 1 of each even-numbered year, the department shall report the following information to the legislature:

(1) with respect to children described by Subsection (a):

(A) the number of children for whom the department has been appointed managing conservator;

(B) the number of children for whom the department has been appointed joint managing conservator; and

(C) the number of children who were diverted to community or residential mental health services through another agency; and

(2) the number of persons whose names were entered into the central registry of cases of child abuse and neglect only because the department was named managing conservator

of a child who has a severe emotional disturbance because the child's family was unable to obtain mental health services for the child.

(c) Subsection (b) and this subsection expire September 1, 2019.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1142 (S.B. 44), Sec. 3, eff. September 1, 2013. Amended by: Acts 2015, 84th Leg., R.S., Ch. 432 (S.B. 1889), Sec. 3, eff. September 1, 2015.

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 263.001. DEFINITIONS

(a) In this chapter:

(1) "Advanced practice nurse" has the meaning assigned by Section 157.051, Occupations Code.

(1–a) "Age-appropriate normalcy activity" has the meaning assigned by Section 264.001.

(1–b) "Department" means the Department of Family and Protective Services.

(2) "Child's home" means the place of residence of at least one of the child's parents.

(3) "Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

(3–a) "Least restrictive setting" means a placement for a child that, in comparison to all other available placements, is the most family-like setting.

(3–b) "Physician assistant" has the meaning assigned by Section 157.051, Occupations Code.

(4) "Substitute care" means the placement of a child who is in the conservatorship of the department in care outside the child's home. The term includes foster care, institutional care, adoption, placement with a relative of the child, or commitment to the Texas Juvenile Justice Department.

(b) In the preparation and review of a service plan under this chapter, a reference to the parents of the child includes both parents of the child unless the child has only one parent or unless, after due diligence by the department in attempting to locate a parent, only one parent is located, in which case the reference is to the remaining parent.

(c) With respect to a child who is older than six years of age and who is removed from the child's home, if a suitable relative or other designated caregiver is not available as a placement for the child, placing the child in a foster home or a general residential operation operating as a cottage home is considered the least restrictive setting.

(d) With respect to a child who is six years of age or younger and who is removed from the child's home, if a suitable relative or other designated caregiver is not available as a placement for the child, the least restrictive setting for the child is placement in:

(1) a foster home; or

(2) a general residential operation operating as a cottage home, only if the department determines it is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 108, eff. Sept. 1, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.36, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 4, eff. May 23, 2009. Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 3, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.170, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 262 (S.B. 1407), Sec. 1, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 1022 (H.B. 1542), Secs. 1, 2, eff. Sept. 1, 2017.

Sec. 263.002. REVIEW OF PLACEMENTS BY COURT; FINDINGS

(a) In a suit affecting the parent-child relationship in which the department has been appointed by the court or designated in an affidavit of relinquishment of parental rights as the temporary or permanent managing conservator of a child, the court shall hold a hearing to review:

(1) the conservatorship appointment and substitute care; and

(2) for a child committed to the Texas Juvenile Justice Department, the child's commitment in the Texas Juvenile Justice Department or release under supervision by the Texas Juvenile Justice Department.

(b) At each permanency hearing under this chapter, the court shall review the placement of each child in the temporary managing conservatorship of the department who is not placed with a relative caregiver or designated caregiver as defined by Section 264.751. The court shall include in its findings a statement whether the department:

(1) asked the child in a developmentally appropriate manner to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child; and

(2) placed the child with a relative or ~~other~~ designated caregiver.

(c) At each permanency hearing before the final order, the court shall review the placement of each child in the temporary managing conservatorship of the department who has not been returned to the child's home. The court shall 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.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 109, eff. Sept. 1, 1995. Amended by: Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 5, eff. May 23, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.171, eff. April 2, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 23, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 3390, Sec. 8, eff. May 27, 2019.

Sec. 263.0021. NOTICE OF HEARING; PRESENTATION OF EVIDENCE

(a) Notice of a hearing under this chapter shall be given to all persons entitled to notice of the hearing.

(b) The following persons are entitled to at least 10 days' notice of a hearing under this chapter and are entitled to present evidence and be heard at the hearing:

(1) the department;

(2) the foster parent, preadoptive parent, relative of the child providing care, or director or director's designee of the group home or general residential operation where the child is residing;

(3) each parent of the child;

(4) the managing conservator or guardian of the child;

(5) an attorney ad litem appointed for the child under Chapter 107, if the appointment was not dismissed in the final order;

(6) a guardian ad litem appointed for the child under Chapter 107, if the appointment was not dismissed in the final order;

(7) a volunteer advocate appointed for the child under Chapter 107, if the appointment was not dismissed in the final order;

(8) the child if:

(A) the child is 10 years of age or older; or

(B) the court determines it is appropriate for the child to receive notice; and

(9) any other person or agency named by the court to have an interest in the child's welfare.

(c) Notice of a hearing under this chapter may be given:

(1) as provided by Rule 21a, Texas Rules of Civil Procedure;

(2) in a temporary order following a full adversary hearing;

(3) in an order following a hearing under this chapter;

(4) in open court; or

(5) in any manner that would provide actual notice to a person entitled to notice.

(d) The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee is entitled to at least 10 days' notice of a permanency hearing after final order.

(e) Notice of a hearing under this chapter provided to an individual listed under Subsection (b)(2) must state that the individual may, but is not required to, attend the hearing and may request to be heard at the hearing.

(f) In a hearing under this chapter, the court shall determine whether the child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 600, Sec. 10, eff. Jan 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 5, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 83, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 849, Sec. 6, eff. Sept. 1, 2001. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 885 (H.B. 843), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.178, eff. April 2, 2015. Transferred, redesignated and amended from Family Code, Section 263.301 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 28, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 24, eff. Sept. 1, 2017.

ANNOTATIONS

In re J.N., No. 02-17-00179-CV, 2017 WL 3910910 (Tex. App.—Fort Worth Sept. 7, 2017, no pet.) (mem. op.). Mother lacks standing to complain about improper notice to a foster parent.

In re T.T.F., 331 S.W.3d 461 (Tex. App.—Fort Worth 2010, no pet.). A mother could not complain on appeal that she was denied procedural due process under this section if she did not enforce her procedural rights in a timely manner in the trial court.

Sec. 263.0025. Special Education Decision-Making for Children in Foster Care

(a) In this section, "child" means a child in the temporary or permanent managing conservatorship of the department who is eligible under Section 29.003, Education Code, to participate in a school district's special education program.

(a–1) A foster parent for a child may act as a parent for the child, as authorized under 20 U.S.C. Section 1415(b), if:

(1) the rights and duties of the department to make decisions regarding the child's education under Section 153.371 have not been limited by court order; and

(2) the foster parent agrees to the requirements of Sections 29.015(a)(3) and (b), Education Code.

(a–2) Sections 29.015(b–1), (c), and (d), Education Code, apply to a foster parent who acts or desires to act as a parent for a child for the purpose of making special education decisions.

(b) To ensure the educational rights of a child are protected in the special education process, the court may appoint a surrogate parent for the child if:

(1) the child's school district is unable to identify or locate a parent for the child; or

(2) the foster parent of the child is unwilling or unable to serve as a parent for the purposes of this subchapter.

(c) Except as provided by Subsection (d), the court may appoint a person to serve as a child's surrogate parent if the person:

(1) is willing to serve in that capacity; and

(2) meets the requirements of 20 U.S.C. Section 1415(b).

(d) The following persons may not be appointed as a surrogate parent for the child:

(1) an employee of the department;

(2) an employee of the Texas Education Agency;

(3) an employee of a school or school district; or

(4) an employee of any other agency that is involved in the education or care of the child.

(e) The court may appoint a child's guardian ad litem or court-certified volunteer advocate, as provided by Section 107.031(c), as the child's surrogate parent.

(f) In appointing a person to serve as the surrogate parent for a child, the court may consider the person's ability to meet the qualifications listed under Sections 29.0151(d)(2)–(8), Education Code.

(g) If the court prescribes training for a person who is appointed as the surrogate parent for a child, the training program must comply with the minimum standards for training established by rule by the Texas Education Agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 688 (H.B. 2619), Sec. 3, eff. September 1, 2013. Amended by Acts 2017, 85th Leg., R.S., Ch. 1025 (H.B. 1556), Sec. 4, eff. Sept. 1, 2017.

Sec. 263.003. INFORMATION RELATING TO PLACEMENT OF CHILD

(a) Except as provided by Subsection (b), not later than the 10th day before the date set for a hearing under this chapter, the department shall file with the court any document described by Sections 262.114(a-1) and (a-2) that has not been filed with the court.

(b) The department is not required to file the documents required by Subsection (a) if the child is in an adoptive placement or another placement that is intended to be permanent.

Added by Acts 2009, 81st Leg., R.S., Ch. 856 (S.B. 2385), Sec. 3, eff. September 1, 2009.

Sec. 263.004. NOTICE TO COURT REGARDING EDUCATION DECISION-MAKING

(a) Unless the rights and duties of the department under Section 153.371(10) to make decisions regarding the child's education have been limited by court order, the department shall file with the court the name and contact information for each person who has been:

(1) designated by the department to make educational decisions on behalf of the child; and

(2) assigned to serve as the child's surrogate parent in accordance with 20 U.S.C. Section 1415(b) and Section 29.001(10), Education Code, for purposes of decision-making regarding special education services, if applicable.

(b) Not later than the fifth day after the date an adversary hearing under Section 262.201 or 262.205 is concluded, the information required by Subsection (a) shall be filed with the court and a copy shall be provided to the school the child attends.

(c) If a person other than a person identified under Subsection (a) is designated to make educational decisions or assigned to serve as a surrogate parent, the department shall include the updated information in a permanency progress report filed under Section 263.303 or 263.502. The updated information must be provided to the school the child attends not later than the fifth day after the date of designation or assignment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 688 (H.B. 2619), Sec. 4, eff. September 1, 2013. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 29, eff. September 1, 2015.

Sec. 263.0045. EDUCATION IN HOME SETTING FOR FOSTER CHILDREN

On request of a person providing substitute care for a child who is in the managing conservatorship of the department, the department shall allow the person to provide the child with an education in a home setting unless:

(1) the right of the department to allow the education of the child in a home setting has been specifically limited by court order;

(2) a court at a hearing conducted under this chapter finds, on good cause shown through evidence presented by the department in accordance with the applicable provisions in the department's child protective services handbook (CPS August 2013), that education in the home setting is not in the best interest of the child; or

(3) the department determines that federal law requires another school setting.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 27, eff. September 1, 2015.

Sec. 263.005. ENFORCEMENT OF FAMILY SERVICE PLAN

The department shall designate existing department personnel to ensure that the parties to a family service plan comply with the plan.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 5, eff. Sept. 1, 1995.

Sec. 263.006. WARNING TO PARENTS

At the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the court has rendered a temporary order appointing the department as temporary managing con-

servator, the court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 6, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 2, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 80, eff. Jan. 1, 1998.

ANNOTATIONS

In re M.R., No. 2-17-00071-CV, 2017 WL 3429147 (Tex. App.—Fort Worth Aug. 10, 2017, pet. denied) (mem. op). Mother had burden to present a record that showed she did not receive termination warnings at the status and permanency hearings. It is not fundamental error for court to fail to provide statutory warnings. Mother had notice of statutory warnings as evidenced by mother's executed waiver of service acknowledging receipt of petition that contained statutory warnings.

In re J.D.B., No. 2-06-451-CV, 2007 WL 2216612 (Tex. App.—Fort Worth Aug. 2, 2007, no pet.) (mem. op.). A mother claimed she never received the statutory warning required by this section, but the orders from the adversary hearing and status hearing recited the warnings and indicated the mother received oral notice at the hearings.

Sec. 263.0061. NOTICE TO PARENTS OF RIGHT TO COUNSEL

(a) At the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the date the court renders a temporary order appointing the department as temporary managing conservator of a child, the court shall inform each parent not represented by an attorney of:

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

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

(b) If a parent claims indigence and requests the appointment of an attorney in a proceeding described by Subsection (a), the court shall require the parent to complete and file with the court an affidavit of indigence. The court may hear evidence to determine whether the parent is indigent. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 810 (S.B. 1759), Sec. 10, eff. September 1, 2013.

ANNOTATIONS

In re A.J., 559 S.W.3d 713 (Tex. App.—Tyler 2018, no pet.). A parent does not waive his right to counsel if the parent fails to object to the appointment of counsel during trial. The trial court's failure to advise the parent of his right to an attorney or to timely appoint an attorney before the start of trial violates procedural due process, which is reversible error.

Sec. 263.007. REPORT REGARDING NOTIFICATION OF RELATIVES

Not later than the 10th day before the date set for a hearing under Subchapter C, the department shall file with the court a report regarding:

(1) the efforts the department made to identify, locate, and provide information to the individuals described by Section 262.1095;

(2) the name of each individual the department identified, located, or provided with information; and

(3) if applicable, an explanation of why the department was unable to identify, locate, or provide information to an individual described by Section 262.1095.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 3, eff. September 1, 2011.

Sec. 263.008. FOSTER CHILDREN'S BILL OF RIGHTS

(a) In this section:

(1) "Agency foster home" and "facility" have the meanings assigned by Section 42.002, Human Resources Code.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86, eff. September 1, 2015.

(3) "Foster children's bill of rights" means the rights described by Subsection (b).

(b) It is the policy of this state that each child in foster care be informed of the child's rights provided by state or federal law or policy that relate to:

(1) abuse, neglect, exploitation, discrimination, and harassment;

(2) food, clothing, shelter, and education;

(3) medical, dental, vision, and mental health services, including the right of the child to consent to treatment;

(4) emergency behavioral intervention, including what methods are permitted, the conditions under which it may be used, and the precautions that must be taken when administering it;

(5) placement with the child's siblings and contact with members of the child's family;

(6) privacy and searches, including the use of storage space, mail, and the telephone;

(7) participation in school-related extracurricular or community activities;

(8) interaction with persons outside the foster care system, including teachers, church members, mentors, and friends;

(9) contact and communication with caseworkers, attorneys ad litem, guardians ad litem, and court-appointed special advocates;

(10) religious services and activities;

(11) confidentiality of the child's records;

(12) job skills, personal finances, and preparation for adulthood;

(13) participation in a court hearing that involves the child;

(14) participation in the development of service and treatment plans;

(15) if the child has a disability, the advocacy and protection of the rights of a person with that disability; and

(16) any other matter affecting the child's ability to receive care and treatment in the least restrictive environment that is most like a family setting, consistent with the best interests and needs of the child.

(c) The department shall provide a written copy of the foster children's bill of rights to each child placed in foster care in the child's primary language, if possible, and shall inform the child of the rights described by the foster children's bill of rights:

(1) orally in the child's primary language, if possible, and in simple, nontechnical terms; or

(2) for a child who has a disability, including an impairment of vision or hearing, through any means that can reasonably be expected to result in successful communication with the child.

(d) A child placed in foster care may, at the child's option, sign a document acknowledging the child's understanding of the foster children's bill of rights after the department provides a written copy of the foster children's bill of rights to the child and informs the child of the rights described by the foster children's bill of rights in accordance with Subsection (c). If a child signs a document acknowledging the child's understanding of the foster children's bill of rights, the document must be placed in the child's case file.

(e) An agency foster home or other residential child-care facility in which a child is placed in foster care shall provide a copy of the foster children's bill of rights to a child on the child's request. The foster children's bill of rights must be printed in English and in a second language.

(f) The department shall promote the participation of foster children and former foster children in educating other foster children about the foster children's bill of rights.

(g) The department shall develop and implement a policy for receiving and handling reports that the rights of a child in foster care are not being observed. The department shall inform a child in foster care and, if appropriate, the child's parent, managing conservator, or guardian of the method for filing a report with the department under this subsection.

(h) This section does not create a cause of action.

Added by Acts 2011, 82nd Leg., R.S., Ch. 791 (H.B. 2170), Sec. 1, eff. September 1, 2011. Redesignated from Family Code, Section 263.007 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(17), eff. September 1, 2013. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.172, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 994 (S.B. 206), Sec. 86(14), eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Secs. 25, 26, eff. Sept. 1, 2017.

Sec. 263.009. PERMANENCY PLANNING MEETINGS

(a) The department shall hold a permanency planning meeting for each child for whom the department is appointed temporary managing conservator in accordance with a schedule adopted by the commissioner of the department by rule that is designed to allow the child to exit the managing conservatorship of the department safely and as soon as possible and be placed with an appropriate adult caregiver who will permanently assume legal responsibility for the child.

(b) At each permanency planning meeting, the department shall:

(1) identify any barriers to achieving a timely permanent placement for the child;

(2) develop strategies and determine actions that will increase the probability of achieving a timely permanent placement for the child; and

(3) use the family group decision-making model whenever possible.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(15), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(15), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(15), eff. September 1, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(15), eff. September 1, 2015.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1324 (S.B. 534), Sec. 2, eff. September 1, 2013. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 30, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(15), eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 11, eff. Sept. 1, 2017.

SUBCHAPTER B. SERVICE PLAN AND VISITATION PLAN

Sec. 263.101. DEPARTMENT TO FILE SERVICE PLAN

Except as provided by Section 262.2015, not later than the 45th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child under Chapter 262, the department shall file a service plan.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 24, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 43, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.173, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 31, eff. September 1, 2015.

ANNOTATIONS

In re E.N.C., 384 S.W.3d 796 (Tex. 2012). Rather than terminating a father's parental rights, the TDFPS could have offered an opportunity to comply with a service plan. The fact that the father resided in Mexico should not hamper TDFPS's efforts.

In re R.R., No. 01-10-01069-CV, 2011 WL 50226229 (Tex. App.—Houston [1st Dist.] Oct. 20, 2011, pet. denied) (mem. op.). A service plan is admissible as a "public record" under Tex. R. Evid. 803(8) because it is a statement and compilation of data required to be filed with the court.

In re M.D.L.E., No. 09-05-514-CV, 2007 WL 685562 (Tex. App.—Beaumont Mar. 8, 2007, no pet.) (mem. op.). The purpose of this section is to provide notice of the steps necessary to have a parent's children returned. Although the service plan was not filed, the record from prior hearings demonstrated that there was a service plan, and there was testimony in prior hearings about the content of the service plan.

In re R.H., No. 09-06-124-CV, 2006 WL 3438075 (Tex. App.—Beaumont Oct. 10, 2006, no pet.) (mem. op.). Parents who argued that the TDFPS violated their due process rights by failing to follow this section waived that argument by failing to raise that argument in the trial court.

Sec. 263.102. SERVICE PLAN; CONTENTS

(a) The service plan must:

(1) be specific;

(2) be in writing in a language that the parents understand, or made otherwise available;

(3) be prepared by the department in conference with the child's parents;

(4) state appropriate deadlines;

(5) specify the primary permanency goal and at least one alternative permanency goal;

(6) state steps that are necessary to:

(A) return the child to the child's home if the placement is in foster care;

(B) enable the child to remain in the child's home with the assistance of a service plan if the placement is in the home under the department's supervision; or

(C) otherwise provide a permanent safe placement for the child;

(7) state the actions and responsibilities that are necessary for the child's parents to take to achieve the plan goal during the period of the service plan and the assistance to be provided to the parents by the department or other agency toward meeting that goal;

(8) state any specific skills or knowledge that the child's parents must acquire or learn, as well as any behavioral changes the parents must exhibit, to achieve the plan goal;

(9) state the actions and responsibilities that are necessary for the child's parents to take to ensure that the child attends school and maintains or improves the child's academic compliance;

(10) state the name of the person with the department whom the child's parents may contact for information relating to the child if other than the person preparing the plan; and

(11) prescribe any other term or condition that the department determines to be necessary to the service plan's success.

(b) The service plan shall include the following statement:

TO THE PARENT: THIS IS A VERY IMPORTANT DOCUMENT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT WITHIN THE REASONABLE PERIOD SPECIFIED IN THE PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT, YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS MAY BE RESTRICTED OR TERMINATED OR YOUR CHILD MAY NOT BE RETURNED TO YOU. THERE WILL BE A COURT HEARING AT WHICH A JUDGE WILL REVIEW THIS SERVICE PLAN.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(16), eff. September 1, 2015.

(d) The department or other authorized entity must write the service plan in a manner that is clear and understandable to the parent in order to facilitate the parent's ability to follow the requirements of the service plan.

(e) Regardless of whether the goal stated in a child's service plan as required under Subsection (a)(5) is to return the child to the child's parents or to terminate parental rights and place the child for adoption, the department shall concurrently provide to the child and the child's family, as applicable:

(1) time-limited family reunification services as defined by 42 U.S.C. Section 629a for a period not to exceed the period within which the court must render a final order in or dismiss the suit affecting the parent-child relationship with respect to the child as provided by Subchapter E; and

(2) adoption promotion and support services as defined by 42 U.S.C. Section 629a.

(f) The department shall consult with relevant professionals to determine the skills or knowledge that the parents of a child under two years of age should learn or acquire to provide a safe placement for the child. The department shall incorporate those skills and abilities into the department's service plans, as appropriate.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(16), eff. September 1, 2015.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.38(a), eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 8, eff. September 1, 2007. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.174, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 32, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(16), eff. September 1, 2015.

ANNOTATIONS

In re S.A.S., No. 01-18-00393-CV, 2018 WL 6613865 (Tex. App.—Houston [1st Dist.] Dec. 18, 2018, no pet. h.) (mem. op.). Parents' failure to complete service plan is sufficient to support termination even if the parents have another child while case is pending and the newborn is not removed from the parents' care.

In re L.T.P., No. 04-17-00094-CV, 2017 WL 3430894 (Tex. App.—San Antonio Aug. 9, 2017, pet. denied) (mem. op.). Court of appeals found that parent understood the requirements of service plan where services were discussed with parent on monthly basis, parent engaged in services, and parent knew where to go for services.

In re K.A.H., No. 04-12-00429-CV, 2012 WL 6195298 (Tex. App.—San Antonio Dec. 12, 2012, no pet.) (mem. op.). This section is intended for parents, not for nonparent managing conservators.

In re F.H.T., No. 13-11-00545-CV, 2012 WL 2357736 (Tex. App.—Corpus Christi June 21, 2012, no pet.) (mem. op.). The Family Code does not provide for any excuses for noncompliance with a service plan.

Liu v. Department of Family & Protective Services, 273 S.W.3d 785 (Tex. App.—Houston [1st Dist.] 2008, no pet.). Failure to attend services offered through the Mental Health-Mental Retardation Authority of Harris County and discontinuing medications constituted a material violation of the court's order sufficient for termination of parental rights.

Sec. 263.103. ORIGINAL SERVICE PLAN: SIGNING AND TAKING EFFECT

(a) The original service plan shall be developed jointly by the child's parents and a representative of the department, including informing the parents of their rights in connection with the service plan process. If a parent is not able or willing to participate in the development of the service plan, it should be so noted in the plan.

(a–1) Before the original service plan is signed, the child's parents and the representative of the department shall discuss each term and condition of the plan.

(b) The child's parents and the person preparing the original service plan shall sign the plan, and the department shall give each parent a copy of the service plan.

(c) If the department determines that the child's parents are unable or unwilling to participate in the development of the original service plan or sign the plan, the department may file the plan without the parents' signatures.

(d) The original service plan takes effect when:

(1) the child's parents and the appropriate representative of the department sign the plan; or

(2) the court issues an order giving effect to the plan without the parents' signatures.

(e) The original service plan is in effect until amended by the court or as provided under Section 263.104.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 598 (S.B. 218), Sec. 4, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.175, eff. April 2, 2015.

ANNOTATIONS

In re B.A.M., No. 09-17-00390-CV, 2018 WL 1630756 (Tex. App.—Beaumont Feb. 14, 2018, no pet.) (mem. op.). Sufficient evidence was offered to support termination of parental rights on failure to comply with service plan even though the actual service plan or court order requiring compliance with the plan were not admitted.

In re T.T.F., 331 S.W.3d 461 (Tex. App.—Fort Worth 2010, no pet.). The TDFPS did not deprive a mother of her procedural due process rights when it filed a service plan without her signature. The TDFPS mailed a copy of the plan to the mother's attorney, telephoned the mother to discuss it, and scheduled appointments for her under the plan.

Sec. 263.104. AMENDED SERVICE PLAN

(a) The service plan may be amended at any time. The department shall work with the parents to jointly develop any amendment to the service plan, including informing the parents of their rights in connection with the amended service plan process.

(b) The amended service plan supersedes the previously filed service plan and takes effect when:

(1) the child's parents and the appropriate representative of the department sign the plan; or

(2) the department determines that the child's parents are unable or unwilling to sign the amended plan and files it without the parents' signatures.

(c) A parent may file a motion with the court at any time to request a review and modification of the amended service plan.

(d) An amended service plan remains in effect until:

(1) superseded by a later-amended service plan that goes into effect as provided by Subsection (b); or

(2) modified by the court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 598 (S.B. 218), Sec. 5, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.176, eff. April 2, 2015.

Sec. 263.105. REVIEW OF SERVICE PLAN; MODIFICATION

(a) The service plan currently in effect shall be filed with the court.

(b) The court shall review the plan at the next required hearing under this chapter after the plan is filed.

(c) The court may modify an original or amended service plan at any time.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 25, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 44, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 4, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 5, eff. September 1, 2011.

Sec. 263.106. COURT IMPLEMENTATION OF SERVICE PLAN

After reviewing the original or any amended service plan and making any changes or modifications it deems necessary, the court shall incorporate the original and any amended service plan into the orders of the court and may render additional appropriate orders to implement or require compliance with an original or amended service plan.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 598 (S.B. 218), Sec. 6, eff. September 1, 2011.

ANNOTATIONS

In re R.W.K., No. 10-16-00393-CV, 2017 WL 1957444 (Tex. App.—Waco May 10, 2017, no pet.) (mem. op.). A court can provide in a final order that a parent continue to participate in services if her rights were not terminated.

Sec. 263.107. VISITATION PLAN

(a). This section applies only to a child in the temporary managing conservatorship of the department for whom the department's goal is reunification of the child with the child's parent.

(b) Not later than the 30th day after the date the department is named temporary managing conservator of a child, the department in collaboration with each parent of the child shall develop a visitation plan.

(c) In determining the frequency and circumstances of visitation under this section, the department must consider:

(1) the safety and best interest of the child;

(2) the age of the child;

(3) the desires of each parent regarding visitation with the child;

(4) the location of each parent and the child; and

(5) the resources available to the department, including the resources to:

(A) ensure that visitation is properly supervised by a department employee or an available and willing volunteer the department determines suitable after conducting a background and criminal history check; and

(B) provide transportation to and from visits.

(d) Not later than the 10th day before the date of a status hearing under Section 263.201, the department shall file with the court a copy of the visitation plan developed under this section.

(e) The department may amend the visitation plan on mutual agreement of the child's parents and the department or as the department considers necessary to ensure the safety of the child. An amendment to the visitation plan must be in the child's best interest. The department shall file a copy of any amended visitation plan with the court.

(f) A visitation plan developed under this section may not conflict with a court order relating to possession of or access to the child.

Added by Acts 2013, 83rd Leg., R.S., Ch. 191 (S.B. 352), Sec. 4, eff. September 1, 2013.

Sec. 263.108. REVIEW OF VISITATION PLAN; MODIFICATION

(a) At the first hearing held under this chapter after the date an original or amended visitation plan is filed with the court under Section 263.107, the court shall review the visitation plan, taking into consideration the factors specified in Section 263.107(c).

(b) The court may modify, or order the department to modify, an original or amended visitation plan at any time.

(c) A parent who is entitled to visitation under a visitation plan may at any time file a motion with the court to request review and modification of an original or amended visitation plan.

Added by Acts 2013, 83rd Leg., R.S., Ch. 191 (S.B. 352), Sec. 4, eff. September 1, 2013.

Sec. 263.109. COURT IMPLEMENTATION OF VISITATION PLAN

(a) After reviewing an original or amended visitation plan, the court shall render an order regarding a parent's visitation with a child that the court determines appropriate.

(b) If the court finds that visitation between a child and a parent is not in the child's best interest, the court shall render an order that:

(1) states the reasons for finding that visitation is not in the child's best interest; and

(2) outlines specific steps the parent must take to be allowed to have visitation with the child.

(c) If the order regarding visitation between a child and a parent requires supervised visitation to protect the health and safety of the child, the order must outline specific steps the parent must take to have the level of supervision reduced.

Added by Acts 2013, 83rd Leg., R.S., Ch. 191 (S.B. 352), Sec. 4, eff. September 1, 2013.

SUBCHAPTER C. STATUS HEARING

Sec. 263.201. STATUS HEARING; TIME

(a) Not later than the 60th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child, the court shall hold a status hearing to review the child's status and the service plan developed for the child.

(b) A status hearing is not required if the court holds an initial permanency hearing under Section 262.2015 and makes findings required by Section 263.202 before the date a status hearing is required by this section.

(c) The court shall require each parent, alleged father, or relative of the child before the court to submit the proposed child placement resources form provided under Section 261.307 at the status hearing, if the form has not previously been submitted.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 600, Sec. 8, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 3, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 81, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 1150, Sec. 26, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 45, eff. Sept. 1, 1999. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.37(a), eff. September 1, 2005. Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 6, eff. September 1, 2011.

ANNOTATIONS

In re C.R., No. 07-19-00009-CV, 2019 WL 1648265 (Tex. App.—Amarillo Apr. 16, 2019, no pet. h.) (mem. op.) (Quinn, C.J., concurring). The purpose of the status hearing is to review the child's status and the service plan. The court is to remain involved with the obligations of a service plan.

In re T.T.F., 331 S.W.3d 461 (Tex. App.—Fort Worth 2010, no pet.). Failure to conduct a status hearing within forty-five days is a procedural requirement, not a jurisdictional one. Mandamus is the proper remedy if a court refuses to hold a status hearing.

Sec. 263.202. STATUS HEARING; FINDINGS

(a) If all persons entitled to citation and notice of a status hearing under this chapter were not served, the court shall make findings as to whether:

(1) the department has exercised due diligence to locate all necessary persons, including an alleged father of the child, regardless of whether the alleged father is registered with the registry of paternity under Section 160.402; and

(2) the child and each parent, alleged father, or relative of the child before the court have furnished to the department all available information necessary to locate an absent parent, alleged father, or relative of the child through exercise of due diligence.

(b) Except as otherwise provided by this subchapter, a status hearing shall be limited to matters related to the contents and execution of the service plan filed with the court. The court shall review the service plan that the department filed under this chapter for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

(1) a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child;

(2) the child's parents have reviewed and understand the plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents;

(3) the plan is reasonably tailored to address any specific issues identified by the department; and

(4) the child's parents and the representative of the department have signed the plan.

(b–1) After reviewing the service plan and making any necessary modifications, the court shall incorporate the service plan into the orders of the court and may render additional appropriate orders to implement or require compliance with the plan.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1071, Sec. 9, eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1071, Sec. 9, eff. September 1, 2011.

(e) At the status hearing, the court shall make a finding as to whether the court has identified the individual who has the right to consent for the child under Section 266.003.

(f) The court shall review the report filed by the department under Section 263.007 and inquire into the sufficiency of the department's efforts to identify, locate, and provide information to each adult described by Section 262.1095(a). The court shall order the department to make further efforts to identify, locate, and provide information to each adult described by Section 262.1095(a) if the court determines that the department's efforts have not been sufficient.

(f–1) The court shall ask all parties present at the status hearing whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated.

(g) The court shall give the child's parents an opportunity to comment on the service plan.

(h) If a proposed child placement resources form as described by Section 261.307 has not been submitted, the court shall require each parent, alleged father, or other person to whom the department is required to provide a form to submit a completed form. **The court shall ask all parties present at the status hearing whether:**

(1) the child has had the opportunity, in a developmentally appropriate manner, to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child; and

(2) each individual identified by the child as a potential relative or designated caregiver is listed on the proposed child placement resources form.

(i) For a child placed with a relative of the child, the court shall inform the relative of:

(1) the option to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and

(2) the permanency care assistance program under Subchapter K, Chapter 264.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 111, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1150, Sec. 27, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 46, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 306, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.38(b), eff. September 1, 2005. Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.39, eff. September 1, 2005. Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 7, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 9, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.177, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 697 (H.B. 825), Sec. 2, eff. September 1, 2015. Acts 2019, 86th Leg., H.B. 3390, Sec. 9, eff. May 27, 2019. Acts 2019, 86th Leg., H.B. 1884, Sec. 3, eff. Sept. 1, 2019.

ANNOTATIONS

In re C.R., No. 07-19-00009-CV, 2019 WL 1648265 (Tex. App.—Amarillo Apr. 16, 2019, no pet. h.) (mem. op.) (Quinn, C.J., concurring). The purpose of the status hearing is to review the child's status and the service plan. The court is to remain involved with the obligations of a service plan.

In re L.G., No. 06-18-00099-CV, 2019 WL 1548925 (Tex. App.—Texarkana Apr. 10, 2019, no pet. h.) (mem. op.). The admonishments required by subsection 263.202(b)(2) are to come from the TDFPS and are not required of the court.

In re B.L.D.-O., No. 13-16-00641-CV, 2017 WL 929486 (Tex. App.—Corpus Christi Mar. 9, 2017, no pet.) (mem. op.). Service plan was reasonably tailored to parent even when parent was incarcerated for part of the time or if services are available while incarcerated. It is the parent's burden to comply with the service plan even if incarcerated.

Sec. 263.203. APPOINTMENT OF ATTORNEY AD LITEM; ADMONISHMENTS

(a) The court shall advise the parties of the provisions regarding the mandatory appointment of an attorney ad litem under Subchapter A, Chapter 107, and shall appoint an attorney ad litem to represent the interests of any person eligible if the appointment is required by that subchapter.

(b) The court shall advise the parties that progress under the service plan will be reviewed at all subsequent hearings, including a review of whether the parties have acquired or learned any specific skills or knowledge stated in the plan.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 8, eff. September 1, 2011.

SUBCHAPTER D. PERMANENCY HEARINGS

Sec. 263.302. CHILD'S ATTENDANCE AT HEARING

The child shall attend each permanency hearing unless the court specifically excuses the child's attendance. A child committed to the Texas Juvenile Justice Department may attend a permanency hear-

ing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and if the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 600, Sec. 11, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 6, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 84, eff. Jan. 1, 1998. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1304 (S.B. 759), Sec. 1, eff. June 15, 2007. Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 6, eff. May 23, 2009. Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 85, eff. September 1, 2015.

Sec. 263.3025. PERMANENCY PLAN

(a) The department shall prepare a permanency plan for a child for whom the department has been appointed temporary managing conservator. The department shall give a copy of the plan to each person entitled to notice under Section 263.0021(b) not later than the 10th day before the date of the child's first permanency hearing.

(b) In addition to the requirements of the department rules governing permanency planning, the permanency plan must contain the information required to be included in a permanency progress report under Section 263.303.

(c) The department shall modify the permanency plan for a child as required by the circumstances and needs of the child.

(d) In accordance with department rules, a child's permanency plan must include concurrent permanency goals consisting of a primary permanency goal and at least one alternate permanency goal.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 7, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 85, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 809, Sec. 5, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 620 (H.B. 2331), Sec. 3, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 1372 (S.B. 939), Sec. 4, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 33, eff. September 1, 2015.

Sec. 263.3026. PERMANENCY GOALS; LIMITATION

(a) The department's permanency plan for a child may include as a goal:

(1) the reunification of the child with a parent or other individual from whom the child was removed;

(2) the termination of parental rights and adoption of the child by a relative or other suitable individual;

(3) the award of permanent managing conservatorship of the child to a relative or other suitable individual; or

(4) another planned, permanent living arrangement for the child.

(b) If the goal of the department's permanency plan for a child is to find another planned, permanent living arrangement for the child, the department shall document that there is a compelling reason why the other permanency goals identified in Subsection (a) are not in the child's best interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 1372 (S.B. 939), Sec. 5, eff. June 19, 2009.

ANNOTATIONS

In re A.N., No. 10-16-00394-CV, 2017 WL 4080100 (Tex. App.—Waco Sept. 13, 2017, no pet.) (mem. op.). Relatives or other suitable individuals can be named conservators of the child even if they are not named as parties to the suit.

In re J.N., No. 02-17-00179-CV, 2017 WL 3910910 (Tex. App.—Fort Worth Sept. 7, 2017, no pet.) (mem. op.). Subsection 263.3026(b) does not apply if TDFPS seeks adoption of the child by a relative or other suitable individual.

Sec. 263.303. PERMANENCY PROGRESS REPORT BEFORE FINAL ORDER

(a) Not later than the 10th day before the date set for each permanency hearing before a final order is rendered, the department shall file with the court and provide to each party, the child's attorney ad litem, the child's guardian ad litem, and the child's volunteer advocate a permanency progress report unless the court orders a different period for providing the report.

(b) The permanency progress report must contain:

(1) information necessary for the court to conduct the permanency hearing and make its findings and determinations under Section 263.306;

(2) information on significant events, as defined by Section 264.018; and

(3) any additional information the department determines is appropriate or that is requested by the court and relevant to the court's findings and determinations under Section 263.306.

(c) A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the department's report filed under this section. A response must be filed not later than the third day before the date of the hearing.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 112, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 600, Sec. 13, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 8, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 86, eff. Jan. 1, 1998. Amended by: Acts 2005, 79th Leg., Ch. 172 (H.B. 307), Sec. 24, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 7, eff. May 23, 2009. Acts 2009, 81st Leg., R.S., Ch. 1372 (S.B. 939), Sec. 6, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.179, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 34, eff. September 1, 2015.

Sec. 263.304. INITIAL PERMANENCY HEARING; TIME

(a) Not later than the 180th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child, the court shall hold a permanency hearing to review the status of, and permanency plan for, the child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter.

(b) The court shall set a final hearing under this chapter on a date that allows the court to render a final order before the date for dismissal of the suit under this chapter. Any party to the suit or an attorney ad litem for the child may seek a writ of mandamus to compel the court to comply with the duties imposed by this subsection.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 600, Sec. 14, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec.

9, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 87, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 1090, Sec. 7, eff. Sept. 1, 2001.

ANNOTATIONS

In re T.T.F., 331 S.W.3d 461 (Tex. App.—Fort Worth 2010, no pet.). A mother could not complain on appeal that she was denied procedural due process under this section if she did not enforce her procedural rights in a timely manner in the trial court.

Sec. 263.305. SUBSEQUENT PERMANENCY HEARINGS

A subsequent permanency hearing before entry of a final order shall be held not later than the 120th day after the date of the last permanency hearing in the suit. For good cause shown or on the court's own motion, the court may order more frequent hearings.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 600, Sec. 15, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 10, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 88, eff. Jan. 1, 1998.

ANNOTATIONS

In re T.T.F., 331 S.W.3d 461 (Tex. App.—Fort Worth 2010, no pet.). A mother could not complain on appeal that she was denied procedural due process under this section if she did not enforce her procedural rights in a timely manner in the trial court.

In re L.S.C., 169 S.W.3d 758 (Tex. App.—Dallas 2005, no pet.). Texas Department of Protective and Regulatory Services should have been dismissed from suit after expiration of time limitation for final order.

Sec. 263.306. PERMANENCY HEARINGS BEFORE FINAL ORDER

(a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 7.009(c), eff. Sept. 1, 2017.

(a–1) At each permanency hearing before a final order is rendered, the court shall:

(1) identify all persons and parties present at the hearing;

(2) review the efforts of the department or other agency in:

(A) locating and requesting service of citation on all persons entitled to service of citation under Section 102.009; and

(B) obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, ~~or~~ relative of the child, **or other adult identified by the child as a potential relative or designated caregiver**;

(3) ask all parties present whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated;

(4) review the extent of the parties' compliance with temporary orders and the service plan and the extent to which progress has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care;

(5) review the permanency progress report to determine:

(A) the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;

(B) the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;

(C) the appropriateness of the primary and alternative permanency goals for the child developed in accordance with department rule and whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child;

(D) whether the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;

(E) **whether the child has been provided the opportunity, in a developmentally appropriate manner, to identify any adults, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child;**

(F) for a child receiving psychotropic medication, whether the child:

(i) has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child's needs; or

(ii) has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;

(G) ~~(F)~~ whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there have been major changes in the child's school performance or there have been serious disciplinary events;

(H) ~~(G)~~ for a child 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community; and

(I) ~~(H)~~ for a child whose permanency goal is another planned permanent living arrangement:

(i) the desired permanency outcome for the child, by asking the child;

(ii) whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:

(a) return home;

(b) be placed for adoption;

(c) be placed with a legal guardian; or

(d) be placed with a fit and willing relative;

(iii) whether the department has conducted an independent living skills assessment under Section 264.121(a–3);

(iv) whether the department has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;

(v) if the youth is 16 years of age or older, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e); and

(vi) if the youth is 18 years of age or older or has had the disabilities of minority removed, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e–1);

(6) determine whether to return the child to the child's parents if the child's parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(7) estimate a likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in permanent managing conservatorship; and

(8) announce in open court the dismissal date and the date of any upcoming hearings.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(18), eff. September 1, 2015.

(c) In addition to the requirements of Subsection (a–1), at each permanency hearing before a final order is rendered the court shall review the department's efforts to:

(1) ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan; **and**

(2) for a child placed with a relative of the child or other designated caregiver; inform the caregiver of:

(A) the option to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and

(B) the permanency care assistance program under Subchapter K, Chapter 264.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 114, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 600, Sec. 16, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, Sec. 11, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 89, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 1390, Sec. 47, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 306, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 849, Sec. 7, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 8, eff. May 23, 2009. Acts 2009, 81st Leg., R.S., Ch. 1372 (S.B. 939), Sec. 7, eff. June 19, 2009. Acts 2013, 83rd Leg., R.S., Ch. 191 (S.B. 352), Sec. 5, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 4, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 688 (H.B. 2619), Sec. 5, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.180, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 262 (S.B. 1407), Sec. 2, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 697 (H.B. 825), Sec. 3, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 35, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 36, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(17), eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(18), eff. September 1, 2015; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 7.009, eff. September 1, 2017; Acts 2017, 85th Leg., R.S., Ch. 937 (S.B. 1758), Sec. 3, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 3390, Sec. 10, eff. May 27, 2019. Acts 2019, 86th Leg., H.B. 1884, Sec. 4, eff. Sept. 1, 2019.

ANNOTATIONS

In re A.J.M., 375 S.W.3d 599 (Tex. App.—Fort Worth 2012, pet. denied). A trial court did not abuse its discretion by denying a parent's motion to extend the dismissal deadline when the ad litem and the TDFPS argued that an extension of time would be harmful to the children's long-term emotional and developmental needs.

Sec. 263.307. FACTORS IN DETERMINING BEST INTEREST OF CHILD

(a) In considering the factors established by this section, the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.

(b) The following factors should be considered by the court and the department in determining whether the child's parents are willing and able to provide the child with a safe environment:

(1) the child's age and physical and mental vulnerabilities;

(2) the frequency and nature of out-of-home placements;

(3) the magnitude, frequency, and circumstances of the harm to the child;

(4) whether the child has been the victim of repeated harm after the initial report and intervention by the department;

(5) whether the child is fearful of living in or returning to the child's home;

(6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;

(7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;

(8) whether there is a history of substance abuse by the child's family or others who have access to the child's home;

(9) whether the perpetrator of the harm to the child is identified;

(10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;

(11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;

(12) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:

(A) minimally adequate health and nutritional care;

(B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;

(C) guidance and supervision consistent with the child's safety;

(D) a safe physical home environment;

(E) protection from repeated exposure to violence even though the violence may not be directed at the child; and

(F) an understanding of the child's needs and capabilities; and

(13) whether an adequate social support system consisting of an extended family and friends is available to the child.

(c) In the case of a child 16 years of age or older, the following guidelines should be considered by the court in determining whether to adopt the permanency plan submitted by the department:

(1) whether the permanency plan submitted to the court includes the services planned for the child to make the transition from foster care to independent living; and

(2) whether this transition is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.181, eff. April 2, 2015.

COMMENTS

Holley v. Adams, 544 S.W.2d 367 (Tex. 1976), lists factors that the finder of fact should consider when determining the best interest of a child.

ANNOTATIONS

In re A.C., 560 S.W.3d 624 (Tex. 2018). Best interest component for termination can be satisfied by a binding mediated settlement agreement that contains stipulations by a parent that termination is in a child's best interest.

In re L.M., ___ S.W.3d ___, No. 14-18-01047-CV, 2019 WL 1526426 (Tex. App.—Houston [14th Dist.] Apr. 9, 2019, no pet. h.). In determining if termination is in a child's best interest, it does not matter whether the TDFPS has considered an adult relative for placement.

In re J.L.C., ___ S.W.3d. ___, No. 07-18-00052-CV, 2018 WL 3524749 (Tex. App.—Amarillo July 19, 2018, pet. ref'd). Permanence for a child through a stable, permanent home is an important factor in determining best interest.

In re S.J.R.-Z., 537 S.W.3d 677 (Tex. App.—San Antonio 2017, pet. denied). The court can look at circumstantial evidence, subjective factors, the totality of the evidence, and direct evidence when determining best interests of the children. Above all, the court should consider the child's placement in a safe environment.

In re S.L.W., 529 S.W.3d 601 (Tex. App.—Texarkana 2017, pet. denied). A termination ruling can be supported by evidence of just one of the factors.

In re A.S.G., No. 04-17-00297-CV, 2017 WL 4801667 (Tex. App.—San Antonio Oct. 25, 2017, no pet.) (mem. op.). The best-interest factors apply to determining if a parent is willing and able to provide the child with a safe environment; they do not pertain to the issue of relative placement.

In re R.R., No. 01-10-01069-CV, 2011 WL 5026229 (Tex. App.—Houston [1st Dist.] Oct. 20, 2011, pet. denied) (mem. op.). A trial court should take into account the best interest factors in this section when determining whether a party has set up a meritorious defense in a motion for new trial.

In re T.T.F., 331 S.W.3d 461 (Tex. App.—Fort Worth 2010, no pet.). The best interest factors set forth in this section are not exhaustive. Undisputed evidence on just one factor may be sufficient to support a finding of termination. However, scant evidence on each factor will not support a finding of termination.

SUBCHAPTER E. FINAL ORDER FOR CHILD UNDER DEPARTMENT CARE

Sec. 263.401. DISMISSAL AFTER ONE YEAR; NEW TRIALS; EXTENSION

(a) Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) or (b–1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court's jurisdiction over the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child is terminated and the suit is automatically dismissed without a court order. Not later than the 60th day before the day the suit is automatically dismissed, the court shall notify all parties to the suit of the automatic dismissal date.

(b) Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in

the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules the new date on which the suit will be automatically dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by Subsection (a);

(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 on a date not later than the date specified under Subdivision (1).

(b–1) If, after commencement of the initial trial on the merits within the time required by Subsection (a) or (b), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court:

(1) schedules a new date on which the suit will be automatically dismissed if the new trial has not commenced, which must be a date not later than the 180th day after the date on which:

(A) the motion for a new trial or mistrial is granted; or

(B) the appellate court remanded the case;

(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 new trial on the merits for a date not later than the date specified under Subdivision (1).

(b–2) When considering under Subsection (b) whether to find that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department for a case in which the court orders a parent to complete a substance abuse treatment program, the court shall consider whether the parent made a good faith effort to successfully complete the program.

(c) If the court grants an extension under Subsection (b) or (b–1) but does not commence the trial on the merits before the dismissal date, the court's jurisdiction over the suit is terminated and the suit is automatically dismissed without a court order. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b) or (b–1), as applicable.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, Sec. 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 90, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 8, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 866 (H.B. 1481), Sec. 2, eff. June 15, 2007. Acts 2007, 80th Leg., R.S., Ch. 866 (H.B. 1481), Sec. 5, eff. June 15, 2007. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 38, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 27, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 12, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 1780, Sec. 1, eff. Sept. 1, 2019.

Section 2 of Acts 2019, 86th Leg., H.B. 1780 states—

"The changes in law made by this Act apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before that date is governed by the law in effect on the date the suit was filed, and that law is continued in effect for that purpose."

ANNOTATIONS

In re Texas Department of Family & Protective Services, 210 S.W.3d 609 (Tex. 2006, orig. proceeding). A motion to dismiss must be filed before the TDFPS introduces all its evidence, other than rebuttal evidence, in the trial on the merits. A motion requesting the court to render a final order must be made before the deadline for dismissal.

In re L.N.C., ___ S.W.3d ___, No. 14-18-00691, 2019 WL 390124 (Tex. App.—Houston [14th Dist.] Jan. 31, 2019, no pet.). A trial continuance should have been granted where a father was bench warranted but not brought to trial.

In re P.M.W., 559 S.W.3d 215 (Tex. App.—Texarkana 2018, pet. denied). It is not ineffective assistance of counsel to agree to extensions of dismissal date.

In re T.W., 557 S.W.3d 841 (Tex. App.—Amarillo 2018, pet. denied). A party who seeks an extension of the dismissal date both agrees to the extension and waives his right to complain of the extension.

In re B.H.R., 535 S.W.3d 114 (Tex. App.—Texarkana 2017, no pet.). A party's failure to file a motion to dismiss before the start of trial constitutes a waiver of such right.

In re J.M.B., No. 05-16-01311-CV, 2017 WL 1536506 (Tex. App.—Dallas Apr. 27, 2017, no pet.) (mem. op.). It was error for the court to deny a parent a jury trial when the request was made more than 200 days prior to the trial date.

In re R.J.B., No. 05-17-01411-CV, 2017 WL 1755540 (Tex. App.—Dallas Apr. 12, 2018, no pet.) (mem. op.). A trial court's decision to grant or deny an extension of the dismissal date is reviewed under an abuse of discretion standard. A parent's incarceration is not generally an extraordinary circumstance.

In re Fletcher, No. 11-17-00045-CV, 2017 WL 962682 (Tex. App.—Eastland Mar. 9, 2017, no pet.) (mem. op.). Trial court abused its discretion when it failed to dismiss lawsuit upon proper motion when the statutory deadlines had passed.

In re Walker, 265 S.W.3d 545 (Tex. App.—Houston [1st Dist.] 2008, orig. proceeding). Although the trial court properly rendered a final order within the correct time frame, the trial court took the case outside the legal time limit for a final order when it granted a motion for new trial.

Sec. 263.402. LIMIT ON EXTENSION

The parties to a suit under this chapter may not extend the deadlines set by the court under this subchapter by agreement or otherwise.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, Sec. 12, eff. Jan. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 90, eff. Jan. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 48, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1090, Sec. 9, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 866 (H.B. 1481), Sec. 3, eff. June 15, 2007; Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 28, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 13, eff. Sept. 1, 2017.

ANNOTATIONS

In re Texas Department of Family & Protective Services, 210 S.W.3d 609 (Tex. 2006, orig. proceeding). These deadlines are not jurisdictional because they can be waived.

Sec. 263.403. MONITORED RETURN OF CHILD TO PARENT

(a) Notwithstanding Section 263.401, the court may retain jurisdiction and not dismiss the suit or render a final order as required by that section if the court renders a temporary order that:

(1) finds that retaining jurisdiction under this section is in the best interest of the child;

(2) orders the department to:

(A) return the child to the child's parent; or

(B) transition the child, according to a schedule determined by the department or court, from substitute care to the parent while the parent completes the remaining requirements imposed under a service plan and specified in the temporary order that are necessary for the child's return;

(3) orders the department to continue to serve as temporary managing conservator of the child; and

(4) orders the department to monitor the child's placement to ensure that the child is in a safe environment.

(a–1) Unless the court has granted an extension under Section 263.401(b), the department or the parent may request the court to retain jurisdiction for an additional six months as necessary for a parent to complete the remaining requirements in a service plan and specified in the temporary order that are mandatory for the child's return.

(b) If the court renders an order under this section, the court shall:

(1) include in the order specific findings regarding the grounds for the order; and

(2) schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit unless a trial on the merits has commenced.

(c) If before the dismissal of the suit or the commencement of the trial on the merits a child placed with a parent under this section must be moved from that home by the department or the court renders a temporary order terminating the transition order issued under Subsection (a)(2)(B), the court shall, at the time of the move or order, schedule a new date for dismissal of the suit. The new dismissal date may not be later than the original dismissal date established under Section 263.401 or the 180th day after the date the child is moved or the order is rendered under this subsection, whichever date is later.

(d) If the court renders an order under this section, the court must include in the order specific findings regarding the grounds for the order.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, Sec. 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 90, eff. Jan. 1, 1998. Renumbered from Family Code Sec. 263.402 by Acts 2001, 77th Leg., ch. 1090, Sec. 9, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 866 (H.B. 1481), Sec. 4, eff. June 15, 2007; Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 29, eff. Sept. 1, 2017.

ANNOTATIONS

In re K.A.H., No. 05-16-01067-CV, 2017 WL 1536505 (Tex. App.—Dallas Apr. 27, 2017, no pet.) (mem. op.). When the child is removed after a monitored return, the dismissal date is the later of the original dismissal date or 180 days after the removal.

In re Texas Department of Family & Protective Services, 348 S.W.3d 492 (Tex. App.—Fort Worth 2011, orig. proceeding). A return and monitor of the child after the mandatory dismissal date is not permissible.

In re J.W.M., 153 S.W.3d 541 (Tex. App.—Amarillo 2004, pet. denied). A trial court may not grant an additional extension of time that extends the suit beyond the required dismissal date. The time restraints imposed by this section are mandatory and not subject to modification by agreement.

Sec. 263.404. FINAL ORDER APPOINTING DEPARTMENT AS MANAGING CONSERVATOR WITHOUT TERMINATING PARENTAL RIGHTS

(a) The court may render a final order appointing the department as managing conservator of the child without terminating the rights of the parent of the child if the court finds that:

(1) appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and

(2) it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

(b) In determining whether the department should be appointed as managing conservator of the child without terminating the rights of a parent of the child, the court shall take the following factors into consideration:

(1) that the child will reach 18 years of age in not less than three years;

(2) that the child is 12 years of age or older and has expressed a strong desire against termination or has continuously expressed a strong desire against being adopted; and

(3) the needs and desires of the child.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 17, eff. Sept. 1, 1997. Renumbered from Family Code Sec. 263.403 by Acts 2001, 77th Leg., ch. 1090, Sec. 9, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 39, eff. September 1, 2015.

ANNOTATIONS

In re J.A.J., 243 S.W.3d 611 (Tex. 2007). This section does not apply when a trial court terminates parental rights but is later reversed on appeal.

Sec. 263.4041. VERIFICATION OF TRANSITION PLAN

Notwithstanding Section 263.401, for a suit involving a child who is 14 years of age or older and whose permanency goal is another planned permanent living arrangement, the court shall verify that:

(1) the department has conducted an independent living skills assessment for the child as provided under Section 264.121(a–3);

(2) the department has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;

(3) if the youth is 16 years of age or older, there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e); and

(4) if the youth is 18 years of age or older or has had the disabilities of minority removed, there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e–1).

Added by Acts 2017, 85th Leg., R.S., Ch. 937 (S.B. 1758), Sec. 4, eff. Sept. 1, 2017.

Sec. 263.405. APPEAL OF FINAL ORDER

(a) An appeal of a final order rendered under this subchapter is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

(b) A final order rendered under this subchapter must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined: "A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR

ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL."

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 75, Sec. 5, eff. September 1, 2011.

(d) The supreme court shall adopt rules accelerating the disposition by the appellate court and the supreme court of an appeal of a final order granting termination of the parent-child relationship rendered under this subchapter.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 75, Sec. 5, eff. September 1, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 75, Sec. 5, eff. September 1, 2011.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 75, Sec. 5, eff. September 1, 2011.

(h) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 75, Sec. 5, eff. September 1, 2011.

(i) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 75, Sec. 5, eff. September 1, 2011.

(j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 75, Sec. 5, eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1090, Sec. 9, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 176 (H.B. 409), Sec. 1, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 526 (S.B. 813), Sec. 2, eff. June 16, 2007. Acts 2011, 82nd Leg., R.S., Ch. 75 (H.B. 906), Sec. 4, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 75 (H.B. 906), Sec. 5, eff. September 1, 2011.

COMMENTS

In re D.W., 249 S.W.3d 625 (Tex. App.—Fort Worth 2008, pet. denied), extensively discusses this section.

Sec. 263.4055. SUPREME COURT RULES

The supreme court by rule shall establish civil and appellate procedures to address:

(1) conflicts between the filing of a motion for new trial and the filing of an appeal of a final order rendered under this chapter; and

(2) the period, including an extension of at least 20 days, for a court reporter to submit the reporter's record of a trial to an appellate court following a final order rendered under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 30, eff. Sept. 1, 2017.

Sec. 263.406. COURT INFORMATION SYSTEM

The Office of Court Administration of the Texas Judicial System shall consult with the courts presiding over cases brought by the department for the protection of children to develop an information system to track compliance with the requirements of this subchapter for the timely disposition of those cases.

Renumbered from Family Code Sec. 263.404 by Acts 2001, 77th Leg., ch. 1090, Sec. 9, eff. Sept. 1, 2001.

Sec. 263.407. FINAL ORDER APPOINTING DEPARTMENT AS MANAGING CONSERVATOR OF CERTAIN ABANDONED CHILDREN; TERMINATION OF PARENTAL RIGHTS

(a) There is a rebuttable presumption that a parent who delivers a child to a designated emergency infant care provider in accordance with Subchapter D, Chapter 262:

(1) is the child's biological parent;

(2) intends to relinquish parental rights and consents to the termination of parental rights with regard to the child; and

(3) intends to waive the right to notice of the suit terminating the parent-child relationship.

(a–1) A party that seeks to rebut a presumption in Subsection (a) may do so at any time before the parent-child relationship is terminated with regard to the child.

(b) If a person claims to be the parent of a child taken into possession under Subchapter D, Chapter 262, before the court renders a final order terminating the parental rights of the child's parents, the court shall order genetic testing for parentage determination unless parentage has previously been established. The court shall hold the petition for termination of the parent-child relationship in abeyance for a period not to exceed 60 days pending the results of the genetic testing.

(c) Before the court may render an order terminating parental rights with regard to a child taken into the department's custody under Section 262.303, the department must:

(1) verify with the National Crime Information Center and state and local law enforcement agencies that the child is not a missing child; and

(2) obtain a certificate of the search of the paternity registry under Subchapter E, Chapter 160, not earlier than the date the department estimates to be the 30th day after the child's date of birth.

Added by Acts 2001 77th Leg., ch. 809, Sec. 6, eff. Sept. 1, 2001. Renumbered from Family Code Sec. 263.405 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(54), eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 620 (H.B. 2331), Sec. 2, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 1035 (H.B. 1747), Sec. 1, eff. June 15, 2007. Acts 2007, 80th Leg., R.S., Ch. 1283 (H.B. 3997), Sec. 12, eff. September 1, 2007.

Sec. 263.408. REQUIREMENTS FOR APPOINTMENT OF NONPARENT AS MANAGING CONSERVATOR

(a) In a suit in which the court appoints a nonparent as managing conservator of a child:

(1) the department must provide the nonparent with an explanation of the differences between appointment as a managing conservator of a child and adoption of a child, including specific statements informing the nonparent that:

(A) the nonparent's appointment conveys only the rights specified by the court order or applicable laws instead of the complete rights of a parent conveyed by adoption;

(B) a parent may be entitled to request visitation with the child or petition the court to appoint the parent as the child's managing conservator, notwithstanding the nonparent's appointment as managing conservator; and

(C) the nonparent's appointment as the child's managing conservator will not result in the eligibility of the nonparent and child for postadoption benefits; and

(2) in addition to the rights and duties provided under Section 153.371, the court order appointing the nonparent as managing conservator must include provisions that address the authority of the nonparent to:

(A) authorize immunization of the child or any other medical treatment that requires parental consent;

(B) obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;

(C) enroll the child in a day-care program or school, including prekindergarten;

(D) authorize the child to participate in school-related or extracurricular or social activities, including athletic activities;

(E) authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;

(F) authorize employment of the child;

(G) apply for and receive public benefits for or on behalf of the child; and

(H) obtain legal services for the child and execute contracts or other legal documents for the child.

(b) The court must require evidence that the nonparent was informed of the rights and duties of a nonparent appointed as managing conservator of a child before the court renders an order appointing the nonparent as managing conservator of a child.

Added by Acts 2015, 84th Leg., R.S., Ch. 182 (S.B. 314), Sec. 1, eff. September 1, 2015.

SUBCHAPTER F. PERMANENCY HEARINGS AFTER FINAL ORDER

Sec. 263.501. PERMANENCY HEARING AFTER FINAL ORDER

(a) If the department has been named as a child's managing conservator in a final order that does not include termination of parental rights, the court shall conduct a permanency hearing after the final order is rendered at least once every six months until the department is no longer the child's managing conservator.

(b) If the department has been named as a child's managing conservator in a final order that terminates a parent's parental rights, the court shall conduct a permanency hearing not later than the 90th day after the date the court renders the final order. The court shall conduct additional permanency hearings at least once every six months until the department is no longer the child's managing conservator.

(c) Notice of each permanency hearing shall be given as provided by Section 263.0021 to each person entitled to notice of the hearing.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(19), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(19), eff. September 1, 2015.

(f) The child shall attend each permanency hearing in accordance with Section 263.302.

(g) A court required to conduct permanency hearings for a child for whom the department has been appointed permanent managing conservator may not dismiss a suit affecting the parent-child relationship filed by the department regarding the child while the child is committed to the Texas Juvenile Justice Department or released under the supervision of the Texas Juvenile Justice Department, unless the

child is adopted or permanent managing conservatorship of the child is awarded to an individual other than the department.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, Sec. 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 90, eff. Jan. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 849, Sec. 8, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1304 (S.B. 759), Sec. 2, eff. June 15, 2007. Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 9, eff. May 23, 2009. Acts 2009, 81st Leg., R.S., Ch. 1372 (S.B. 939), Sec. 8, eff. June 19, 2009. Acts 2013, 83rd Leg., R.S., Ch. 885 (H.B. 843), Sec. 2, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 86, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 41, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 42, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(19), eff. September 1, 2015.

ANNOTATIONS

In re J.A.J., 243 S.W.3d 611 (Tex. 2007). An appellate court's reversal of a termination does not automatically reverse the trial court's appointment of a managing conservator.

Jasek v. Texas Department of Family & Protective Services, 348 S.W.3d 523 (Tex. App.—Austin 2011, no pet.). The review hearings provided by this section do not make a case still "pending" with the court once the final order is signed.

Sec. 263.502. PERMANENCY PROGRESS REPORT AFTER FINAL ORDER

(a) Not later than the 10th day before the date set for a permanency hearing after a final order is rendered, the department shall file a permanency progress report with the court and provide a copy to each person entitled to notice under Section 263.0021.

(a–1) The permanency progress report must contain:

(1) information necessary for the court to conduct the permanency hearing and make its findings and determinations under Section 263.5031;

(2) information on significant events, as defined by Section 264.018; and

(3) any additional information the department determines is appropriate or that is requested by the court and relevant to the court's findings and determinations under Section 263.5031.

(a–2) For good cause shown, the court may:

(1) order a different deadline for filing the permanency progress report; or

(2) waive the reporting requirement for a specific hearing.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(20), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(20), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(20), eff. September 1, 2015.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, Sec. 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 90, eff. Jan. 1, 1998. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1372 (S.B. 939), Sec. 9, eff. June 19, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.182, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 43, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 44, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(20), eff. September 1, 2015.

Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE

Without reference to the addition of this subsection, this section was repealed by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(21), eff. September 1, 2015.

(c) In addition to the requirements of Subsection (a), at each placement review hearing the court shall review the department's efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, Sec. 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, Sec. 90, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 849, Sec. 9, eff. Sept. 1, 2001.; Acts 2009, 81st Leg., Ch. 108, Sec. 11, eff. May 23, 2009; Acts 2009, 81st Leg., Ch. 1372, Sec. 10, eff. June 19, 2009. Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 9.003, eff. September 1, 2011. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 5, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 688 (H.B. 2619), Sec. 6, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.183, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 262 (S.B. 1407), Sec. 3, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(21), eff. September 1, 2015.

Sec. 263.5031. PERMANENCY HEARINGS FOLLOWING FINAL ORDER

At each permanency hearing after the court renders a final order, the court shall:

(1) identify all persons and parties present at the hearing;

(2) review the efforts of the department or other agency in notifying persons entitled to notice under Section 263.0021; ~~and~~

(3) **for a child placed with a relative of the child or other designated caregiver, review the efforts of the department to inform the caregiver of:**

(A) the option to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and

(B) the permanency care assistance program under Subchapter K, Chapter 264; and

(4) review the permanency progress report to determine:

(A) the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;

(B) **whether the child has been provided the opportunity, in a developmentally appropriate manner, to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child;**

(C) whether the department placed the child with a relative or ~~other~~ designated caregiver and the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;

(D) ~~(C)~~ if the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive environment consistent with the child's best interest and special needs;

(E) ~~(D)~~ the appropriateness of the primary and alternative permanency goals for the child, whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:

(i) the department has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or

(ii) another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;

(F) ~~(E)~~ for a child whose permanency goal is another planned permanent living arrangement:

(i) the desired permanency outcome for the child, by asking the child;

(ii) whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:

(a) return home;

(b) be placed for adoption;

(c) be placed with a legal guardian; or

(d) be placed with a fit and willing relative;

(iii) whether the department has conducted an independent living skills assessment under Section 264.121(a–3);

(iv) whether the department has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the independent living skills assessment;

(v) if the youth is 16 years of age or older, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e); and

(vi) if the youth is 18 years of age or older or has had the disabilities of minority removed, whether there is evidence that the department has provided the youth with the documents and information listed in Section 264.121(e–1);

(G) ~~(F)~~ if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community;

(H) ~~(G)~~ whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;

(I) ~~(H)~~ for a child receiving psychotropic medication, whether the child:

(i) has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child's needs; or

(ii) has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;

(J) ~~(I)~~ whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events;

(K) ~~(J)~~ for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, whether to order the

department to provide services to a parent for not more than six months after the date of the permanency hearing if:

(i) the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and

(ii) the court determines that further efforts at reunification with a parent are:

(a) in the best interest of the child; and

(b) likely to result in the child's safe return to the child's parent; and

(L) ~~(K)~~ whether the department has identified a family or other caring adult who has made a permanent commitment to the child.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 45, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 31, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., Ch. 937 (S.B. 1758), Sec. 5, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 1884, Sec. 5, eff. Sept. 1, 2019. Acts 2019, 86th Leg., H.B. 3390, Sec. 11, eff. May 27, 2019.

SUBCHAPTER G. EXTENDED JURISDICTION AFTER CHILD'S 18TH BIRTHDAY

Sec. 263.601. DEFINITIONS

In this subchapter:

(1) "Extended foster care" means a residential living arrangement in which a young adult voluntarily delegates to the department responsibility for the young adult's placement and care and in which the young adult resides with a foster parent or other residential services provider that is:

(A) licensed or approved by the department or verified by a licensed or certified child-placing agency; and

(B) paid under a contract with the department.

(2) "Guardianship services" means the services provided by the Department of Aging and Disability Services under Subchapter E, Chapter 161, Human Resources Code.

(3) "Institution" means a residential facility that is operated, licensed, registered, certified, or verified by a state agency other than the department. The term includes a residential service provider under a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act that provides services at a residence other than the young adult's own home.

(3–a) "Trial independence" means the status assigned to a young adult under Section 263.6015.

(4) "Young adult" means a person who was in the conservatorship of the department on the day before the person's 18th birthday.

Added by Acts 2009, 81st Leg., R.S., Ch. 96 (H.B. 704), Sec. 1, eff. May 23, 2009. Amended by: Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 11.01, eff. September 28, 2011. Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 63.01, eff. September 28, 2011. Acts 2013, 83rd Leg., R.S., Ch. 456 (S.B. 886), Sec. 1, eff. September 1, 2013.

Sec. 263.6015. TRIAL INDEPENDENCE

(a) A young adult is assigned trial independence status when the young adult:

(1) does not enter extended foster care at the time of the young adult's 18th birthday; or

(2) exits extended foster care before the young adult's 21st birthday.

(b) Except as provided by Subsection (c), a court order is not required for a young adult to be assigned trial independence status. Trial independence is mandatory for a period of at least six months beginning on:

(1) the date of the young adult's 18th birthday for a young adult described by Subsection (a)(1); or

(2) the date the young adult exits extended foster care.

(c) A court may order trial independence status extended for a period that exceeds the mandatory period under Subsection (b) but does not exceed one year from the date the period under Subsection (b) commences.

(d) Except as provided by Subsection (e), a young adult who enters or reenters extended foster care after a period of trial independence must complete a new period of trial independence as provided by Subsection (b)(2).

(e) The trial independence status of a young adult ends on the young adult's 21st birthday.

Added by Acts 2013, 83rd Leg., R.S., Ch. 456 (S.B. 886), Sec. 2, eff. September 1, 2013.

Sec. 263.602. EXTENDED JURISDICTION

(a) Except as provided by Subsection (f), a court that had 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 is in extended foster care and during trial independence as described by Section 263.6015.

(b) A court with extended jurisdiction over a young adult in extended foster care shall conduct extended foster care review hearings every six months for the purpose of reviewing and making findings regarding:

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

(2) whether the department 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) whether, for a young adult whose permanency plan is independent living:

(A) the young adult participated in the development of the 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 continues to make reasonable progress in developing the skills needed to achieve independence by the projected date; and

(4) whether additional services that the department is authorized to provide are needed to meet the needs of the young adult.

(c) Not later than the 10th day before the date set for a hearing under this section, the department shall file with the court a copy of the young adult's plan of service and a report that addresses the issues described by Subsection (b).

(d) Notice of an extended foster care review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, 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) the department;

(3) the foster parent with whom the young adult is placed and the 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 is still 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 which has not been previously dismissed by the court.

(e) If, after reviewing the young adult's plan of service and the report filed 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, the court may order the department to take appropriate action to ensure that the young adult receives those services.

(f) Unless the court extends its jurisdiction over a young adult beyond the end of trial independence as provided by Section 263.6021(a) or 263.603(a), the court's extended jurisdiction over a young adult as described in Subsection (a) terminates on the earlier of:

(1) the last day of the month in which trial independence ends; or

(2) the young adult's 21st birthday.

(g) A court with extended jurisdiction described by this section is not required to conduct periodic hearings described in this section for a young adult during trial independence and may not compel a young adult who has elected to not enter or has exited extended foster care to attend a court hearing. A court with extended jurisdiction during trial independence may, at the request of a young adult, conduct a hearing described by Subsection (b) or by Section 263.6021 to review any transitional living services the young adult is receiving during trial independence.

Added by Acts 2009, 81st Leg., R.S., Ch. 96 (H.B. 704), Sec. 1, eff. May 23, 2009. Amended by: Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 11.02, eff. September 28, 2011. Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 63.02, eff. September 28, 2011. Acts 2013, 83rd Leg., R.S., Ch. 456 (S.B. 886), Sec. 3, eff. September 1, 2013.

Sec. 263.6021. VOLUNTARY EXTENDED JURISDICTION FOR YOUNG ADULT RECEIVING TRANSITIONAL LIVING SERVICES

(a) Notwithstanding Section 263.602, a court that had jurisdiction over a young adult on the day before the young adult's 18th birthday may, at the young adult's request, render an order that extends the court's jurisdiction beyond the end of trial independence if the young adult receives transitional living services from the department.

(b) Unless the young adult reenters extended foster care before the end of the court's extended jurisdiction described by Subsection (a), the extended jurisdiction of the court under this section terminates on the earlier of:

(1) the young adult's 21st birthday; or

(2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court.

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

(d) Before a review hearing scheduled under this section, the department must file with the court a 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) If, after reviewing the report and any additional testimony and evidence presented at the hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 11.03, eff. September 28, 2011. Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 63.03, eff. September 28, 2011. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 456 (S.B. 886), Sec. 4, eff. September 1, 2013.

Sec. 263.603. EXTENDED JURISDICTION TO DETERMINE GUARDIANSHIP

(a) Notwithstanding Section 263.6021, if the court believes that a young adult may be incapacitated as defined by Section 1002.017(2), Estates Code, the court may extend its jurisdiction on its own motion without the young adult's consent to allow the department to refer the young adult to the Department of Aging and Disability Services for guardianship services as required by Section 48.209, Human Resources Code.

(b) The extended jurisdiction of the court under this section terminates on the earliest of the date:

(1) the Department of Aging and Disability Services determines a guardianship is not appropriate under Chapter 161, Human Resources Code;

(2) a court with probate jurisdiction denies the application to appoint a guardian; or

(3) a guardian is appointed and qualifies under the Estates Code.

(c) If the Department of Aging and Disability Services determines a guardianship is not appropriate, or the court with probate jurisdiction denies the application to appoint a guardian, the court under Subsection (a) may continue to extend its jurisdiction over the young adult only as provided by Section 263.602 or 263.6021.

(d) Notwithstanding any other provision of this subchapter, a young adult for whom a guardian is appointed and qualifies is not considered to be in extended foster care or trial independence and the court's jurisdiction ends on the date the guardian for the young adult is appointed and qualifies unless the guardian requests the extended jurisdiction of the court under Section 263.604.

Added by Acts 2009, 81st Leg., R.S., Ch. 96 (H.B. 704), Sec. 1, eff. May 23, 2009. Amended by: Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 11.04, eff. September 28, 2011. Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 63.04, eff. September 28, 2011. Acts 2013, 83rd Leg., R.S., Ch. 456 (S.B. 886), Sec. 5, eff. September 1, 2013; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.020, eff. September 1, 2017.

Sec. 263.604. GUARDIAN'S CONSENT TO EXTENDED JURISDICTION

(a) A guardian appointed for a young adult may request that the court extend the court's jurisdiction over the young adult.

(b) A court that extends its jurisdiction over a young adult for whom a guardian is appointed may not issue an order that conflicts with an order entered by the probate court that has jurisdiction over the guardianship proceeding.

Added by Acts 2009, 81st Leg., R.S., Ch. 96 (H.B. 704), Sec. 1, eff. May 23, 2009.

Sec. 263.605. CONTINUED OR RENEWED APPOINTMENT OF ATTORNEY AD LITEM, GUARDIAN AD LITEM, OR VOLUNTEER ADVOCATE

A court with extended jurisdiction under this subchapter may continue or renew the appointment of an attorney ad litem, guardian ad litem, or volunteer advocate for the young adult to assist the young adult in accessing services the young adult is entitled to receive from the department or any other public or private service provider.

Added by Acts 2009, 81st Leg., R.S., Ch. 96 (H.B. 704), Sec. 1, eff. May 23, 2009.

Sec. 263.606. DUTIES OF ATTORNEY OR GUARDIAN AD LITEM

An attorney ad litem or guardian ad litem appointed for a young adult who receives services in the young adult's own home from a service provider or resides in an institution that is licensed, certified, or verified by a state agency other than the department shall assist the young adult as necessary to ensure that the young adult receives appropriate services from the service provider or institution, or the state agency that regulates the service provider or institution.

Added by Acts 2009, 81st Leg., R.S., Ch. 96 (H.B. 704), Sec. 1, eff. May 23, 2009.

Sec. 263.607. PROHIBITED APPOINTMENTS AND ORDERS

(a) The court may not appoint the department or the Department of Aging and Disability Services as the managing conservator or guardian of a young adult.

(b) A court may not order the department to provide a service to a young adult unless the department:

(1) is authorized to provide the service under state law; and

(2) is appropriated money to provide the service in an amount sufficient to comply with the court order and the department's obligations to other young adults for whom the department is required to provide similar services.

Added by Acts 2009, 81st Leg., R.S., Ch. 96 (H.B. 704), Sec. 1, eff. May 23, 2009.

Sec. 263.608. RIGHTS OF YOUNG ADULT

A young adult who consents to the continued jurisdiction of the court has the same rights as any other adult of the same age.

Added by Acts 2009, 81st Leg., R.S., Ch. 96 (H.B. 704), Sec. 1, eff. May 23, 2009.

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 264.001. DEFINITIONS

In this chapter:

(1) "Age-appropriate normalcy activity" means an activity or experience:

(A) that is generally accepted as suitable for a child's age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group; and

(B) in which a child who is not in the conservatorship of the state is generally allowed to participate, including extracurricular activities, in-school and out-of-school social activities, cultural and enrichment activities, and employment opportunities.

(1–a) "Department" means the Department of Family and Protective Services.

(2) Repealed by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 36(1), eff. September 1, 2017.

(3) Repealed by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 36(1), eff. September 1, 2017.

(3–a) "Least restrictive setting" means a placement for a child that, in comparison to all other available placements, is the most family-like setting.

(4) "Residential child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(5) "Standard of care of a reasonable and prudent parent" means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

(A) the overall health and safety of the child;

(B) the child's age, maturity, and development level;

(C) the best interest of the child based on the caregiver's knowledge of the child;

(D) the appropriateness of a proposed activity and any potential risk factors;

(E) the behavioral history of the child and the child's ability to safely participate in a proposed activity;

(F) the importance of encouraging the child's social, emotional, and developmental growth; and

(G) the importance of providing the child with the most family-like living experience possible.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.42, eff. September 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 262 (S.B. 1407), Sec. 4, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 1022 (H.B. 1542), Sec. 3, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 36(1), eff. Sept. 1, 2017.

Sec. 264.0011. REFERENCE TO EXECUTIVE COMMISSIONER OR COMMISSION

In this chapter:

(1) a reference to the executive commissioner or the executive commissioner of the Health and Human Services Commission means the commissioner of the department; and

(2) a reference to the commission or the Health and Human Services Commission means the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 12, eff. Sept. 1, 2017.

Sec. 264.002. SPECIFIC APPROPRIATION REQUIRED

(a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(22), eff. September 1, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(22), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(22), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(22), eff. September 1, 2015.

(e) The department may not spend state funds to accomplish the purposes of this subtitle unless the funds have been specifically appropriated for those purposes.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 46, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 47, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(22), eff. September 1, 2015.

Sec. 264.004. ALLOCATION OF STATE FUNDS

(a) The department shall establish a method of allocating state funds for children's protective services programs that encourages and rewards the contribution of funds or services from all persons, including local governmental entities.

(b) Except as provided by this subsection, if a contribution of funds or services is made to support a children's protective services program in a particular county, the department shall use the contribution to benefit that program. The department may use the contribution for another purpose only if the commissioners court of the county gives the department written permission.

(c) The department may use state and federal funds to provide benefits or services to children and families who are otherwise eligible for the benefits or services, including foster care, adoption assistance, medical assistance, family reunification services, and other child protective services and related benefits without regard to the immigration status of the child or the child's family.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 23, eff. Sept. 1, 1997.

Sec. 264.005. COUNTY CHILD WELFARE BOARDS

(a) The commissioners court of a county may appoint a child welfare board for the county. The commissioners court and the department shall determine the size of the board and the qualifications of its members. However, a board must have not less than seven and not more than 15 members, and the

members must be residents of the county. The members shall serve at the pleasure of the commissioners court and may be removed by the court for just cause. The members serve without compensation.

(b) With the approval of the department, two or more counties may establish a joint child welfare board if that action is found to be more practical in accomplishing the purposes of this chapter. A board representing more than one county has the same powers as a board representing a single county and is subject to the same conditions and liabilities.

(c) The members of a county child welfare board shall select a presiding officer and shall perform the duties required by the commissioners court and the department to accomplish the purposes of this chapter.

(d) A county child welfare board is an entity of the department for purposes of providing coordinated state and local public welfare services for children and their families and for the coordinated use of federal, state, and local funds for these services. The child welfare board shall work with the commissioners court.

(e) A county child welfare board is a governmental unit for the purposes of Chapter 101, Civil Practice and Remedies Code.

(f) A county child protective services board member may receive information that is confidential under Section 40.005, Human Resources Code, or Section 261.201 when the board member is acting in the member's official capacity.

(g) A child welfare board may conduct a closed meeting under Section 551.101, Government Code, to discuss, consider, or act on a matter that is confidential under Section 40.005, Human Resources Code, or Section 261.201.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 24, eff. Sept. 1, 1997.

ANNOTATIONS

Harris County Children Protective Services v. Richker, 2 S.W.3d 741 (Tex. App.—Houston [14th Dist.] 1999, no pet.). Harris County Children Protective Services is an arm of the state, not the county, pursuant to Tex. Hum. Res. Code § 52.1073(b).

Sec. 264.006. COUNTY FUNDS

The commissioners court of a county may appropriate funds from its general fund or any other fund for the administration of its county child welfare board. The court may provide for services to and support of children in need of protection and care without regard to the immigration status of the child or the child's family.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 25, eff. Sept. 1, 1997.

Sec. 264.008. CHILD WELFARE SERVICE FUND

The child welfare service fund is a special fund in the state treasury. The fund shall be used to administer the child welfare services provided by the department.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 264.009. LEGAL REPRESENTATION OF DEPARTMENT

(a) Except as provided by Subsection (b), (c), or (f), in any action under this code, the department shall be represented in court by the county attorney of the county where the action is brought, unless the district attorney or criminal district attorney of the county elects to provide representation.

(b) If the county attorney, district attorney, or criminal district attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action.

(c) If the attorney general is unable to represent the department in an action under this code, the attorney general shall deputize an attorney who has contracted with the department under Subsection (d) or an attorney employed by the department under Subsection (e) to represent the department in the action.

(d) Subject to the approval of the attorney general, the department may contract with a private attorney to represent the department in an action under this code.

(e) The department may employ attorneys to represent the department in an action under this code.

(f) In a county with a population of 2.8 million or more, in an action under this code, the department shall be represented in court by the attorney who represents the state in civil cases in the district or county court of the county where the action is brought. If such attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 116, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 91, eff. Sept. 1, 1997.

Sec. 264.0091. USE OF TELECONFERENCING AND VIDEOCONFERENCING TECHNOLOGY

Subject to the availability of funds, the department, in cooperation with district and county courts, shall expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts, children, and other individuals in court proceedings, including children for whom the department or a licensed child-placing agency has been appointed managing conservator and who are committed to the Texas Juvenile Justice Department.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.43, eff. September 1, 2005. Amended by: Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 12, eff. May 23, 2009. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.184, eff. April 2, 2015.

ANNOTATIONS

In re J.C., ___ S.W.3d ___, No. 10-18-00214-CV, 2018 WL 5662103 (Tex. App.—Waco Oct. 31, 2018, no pet.). Court did not abuse its discretion in allowing a non-party witness to testify via real-time video conferencing.

Sec. 264.010. CHILD ABUSE PLAN; LIMITATION ON EXPENDITURE OF FUNDS

(a) Funds appropriated for protective services, child and family services, and the purchased service system for the department may only be spent on or after March 1, 1996, in a county that provides the department with a child abuse prevention and protection plan. If a plan is not submitted to the department under this section, the department shall document the county's failure to submit a plan and may spend appropriated funds in the county to carry out the department's duties under this subtitle.

(b) A child abuse prevention and protection plan may be submitted by the governing body of a county or of a regional council of governments in which the county is an active participant.

(c) The department may not require a child abuse prevention and protection plan to exceed five double-spaced letter-size pages. The county or council of governments may voluntarily provide a longer plan.

(d) A child abuse prevention and protection plan must:

(1) specify the manner of communication between entities who are parties to the plan, including the department, the commission, local law enforcement agencies, the county and district attorneys, members of the medical and social service community, foster parents, and child advocacy groups; and

(2) provide other information concerning the prevention and investigation of child abuse in the area for which the plan is adopted.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 6, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.185, eff. April 2, 2015.

Sec. 264.011. LOCAL ACCOUNTS

(a) The department may establish and maintain local bank or savings accounts for a child who is under the managing conservatorship of the department as necessary to administer funds received in trust for or on behalf of the child.

(b) Funds maintained in an account under this section may be used by the department to support the child, including for the payment of foster care expenses, or may be paid to a person providing care for the child.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 26, eff. Sept. 1, 1997.

Sec. 264.0111. MONEY EARNED BY CHILD

(a) A child for whom the department has been appointed managing conservator and who has been placed by the department in a residential child-care facility as defined by Chapter 42, Human Resources Code, is entitled to keep any money earned by the child during the time of the child's placement.

(b) The child may deposit the money earned by the child in a bank or savings account subject to the sole management and control of the child as provided by Section 34.305, Finance Code. The child is the sole and absolute owner of the deposit account.

(c) If a child earns money as described by this section and is returned to the child's parent or guardian, the child's parent or guardian may not interfere with the child's authority to control, transfer, draft on, or make a withdrawal from the account.

(d) In this section, a reference to money earned by a child includes any interest that accrues on the money.

(e) The executive commissioner may adopt rules to implement this section.

Added by Acts 2001, 77th Leg., ch. 964, Sec. 3, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.186, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 32, eff. Sept. 1, 2017.

Sec. 264.0121. NOTICE TO LEGISLATORS OF FOSTER CHILD'S DEATH

Not later than the fifth day after the date the department is notified of the death of a child for whom the department has been appointed managing conservator, the department shall provide the information described by Section 261.203(a) for the child to the state senators and state representatives who represent:

(1) the county in which the child's placement at the time of the child's death was located; and

(2) the county in which a suit affecting the parent-child relationship involving the child is pending.

Added by Acts 2015, 84th Leg., R.S., Ch. 722 (H.B. 1309), Sec. 2, eff. June 17, 2015.

Sec. 264.013. EXCHANGE OF INFORMATION WITH OTHER STATES

Subject to the availability of funds, the department shall enter into agreements with other states to allow for the exchange of information relating to a child for whom the department is or was the managing conservator. The information may include the child's health passport and education passport.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.44, eff. September 1, 2005.

Sec. 264.0145. RELEASE OF CASE RECORD

(a) In this section, "case record" means those files, reports, records, communications, audio recordings, video recordings, or working papers under the custody and control of the department that are collected, developed, or used:

(1) in a child abuse or neglect investigation; or

(2) in providing services as a result of an investigation, including substitute care services for a child.

(b) The executive commissioner by rule shall establish guidelines that prioritize requests to release case records, including those made by an adult previously in the department's managing conservatorship.

(c) The department is not required to release a copy of the case record except as provided by law and department rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 568 (H.B. 3234), Sec. 1, eff. September 1, 2011. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 1069 (H.B. 3259), Sec. 2, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.187, eff. April 2, 2015.

Sec. 264.015. TRAINING

(a) The department shall include training in trauma-informed programs and services in any training the department provides to foster parents, adoptive parents, kinship caregivers, department caseworkers, and department supervisors. The department shall pay for the training provided under this subsection with gifts, donations, and grants and any federal money available through the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351). The department shall annually evaluate the effectiveness of the training provided under this subsection to ensure progress toward a trauma-informed system of care.

(b) The department shall require department caseworkers and department supervisors to complete an annual refresher training course in trauma-informed programs and services.

(c) To the extent that resources are available, the department shall assist the following entities in developing training in trauma-informed programs and services and in locating money and other resources to assist the entities in providing trauma-informed programs and services:

(1) court-appointed special advocate programs;

(2) children's advocacy centers;

(3) local community mental health centers created under Section 534.001, Health and Safety Code; and

(4) domestic violence shelters.

Added by Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 5, eff. September 1, 2009. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 371 (S.B. 219), Sec. 1, eff. September 1, 2011.

Sec. 264.017. REQUIRED REPORTING

(a) The department shall prepare and disseminate a report of statistics by county relating to key performance measures and data elements for child protection.

(b) The department shall provide the report required by Subsection (a) to the legislature and shall publish the report and make the report available electronically to the public not later than February 1 of each year. The report must include, with respect to the preceding year:

(1) information on the number and disposition of reports of child abuse and neglect received by the department;

(2) information on the number of clients for whom the department took protective action, including investigations, alternative responses, and court-ordered removals;

(3) information on the number of clients for whom the department provided services in each program administered by the child protective services division, including investigations, alternative responses, family-based safety services, conservatorship, post-adoption services, and transitional living services;

(4) the number of children in this state who died as a result of child abuse or neglect;

(5) the number of children described by Subdivision (4) for whom the department was the children's managing conservator at the time of death;

(6) information on the timeliness of the department's initial contact in an investigation or alternative response;

(7) information on the response time by the department in commencing services to families and children for whom an allegation of child abuse or neglect has been made;

(8) information regarding child protection staffing and caseloads by program area;

(9) information on the permanency goals in place and achieved for children in the managing conservatorship of the department, including information on the timeliness of achieving the goals, the stability of the children's placement in foster care, and the proximity of placements to the children's home counties;

(10) the number of children who suffer from a severe emotional disturbance and for whom the department is appointed managing conservator, including statistics on appointments as

joint managing conservator, due to an individual voluntarily relinquishing custody of a child solely to obtain mental health services for the child;

(11) the number of children who are pregnant or a parent while in the managing conservatorship of the department and the number of the children born to a parent in the managing conservatorship of the department who are placed in the managing conservatorship of the department;

(12) the number of children who are missing from the children's substitute care provider while in the managing conservatorship of the department; and

(13) the number of children who were victims of trafficking under Chapter 20A, Penal Code, while in the managing conservatorship of the department.

(c) To the extent feasible, the report must also include, for each county, the amount of funding for child abuse and neglect prevention services and the rate of child abuse and neglect per 1,000 children in the county for the preceding year and for each of the preceding five years.

(d) Not later than September 1 of each year, the department shall seek public input regarding the usefulness of, and any proposed modifications to, existing reporting requirements and proposed additional reporting requirements. The department shall evaluate the public input provided under this subsection and seek to facilitate reporting to the maximum extent feasible within existing resources and in a manner that is most likely to assist public understanding of department functions.

(e) In addition to the information required under Subsections (a) and (b), the department shall annually publish information on the number of children who died during the preceding year whom the department determined had been abused or neglected but whose death was not the result of the abuse or neglect. The department may publish the information described by this subsection in the same report required by Subsection (a) or in another annual report published by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 48, eff. September 1, 2015. Section as added by Acts 2015, 84th Leg., R.S., Ch. 713 (H.B. 1217), Sec. 1, eff. September 1, 2015, repealed as duplicative by Acts 2017, 85th Leg., S.B. 1488, Sec. 7.010, eff. September 1, 2017.

Sec. 264.018. REQUIRED NOTIFICATIONS

(a) In this section:

(1) "Child-placing agency" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Psychotropic medication" has the meaning assigned by Section 266.001.

(3) "Residential child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(4) "Significant change in medical condition" means the occurrence of an injury or the onset of an illness that is life-threatening or may have serious long-term health consequences. The term includes the occurrence or onset of an injury or illness that requires hospitalization for surgery or another procedure that is not minor emergency care.

(5) "Significant event" means:

(A) a placement change, including failure by the department to locate an appropriate placement for at least one night;

(B) a significant change in medical condition;

(C) an initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication;

(D) a major change in school performance or a serious disciplinary event at school; or

(E) any event determined to be significant under department rule.

(b) The notification requirements of this section are in addition to other notice requirements provided by law, including Sections 263.0021, 264.107(g), and 264.123.

(c) The department must provide notice under this section in a manner that would provide actual notice to a person entitled to the notice, including the use of electronic notice whenever possible.

(d) Not later than 24 hours after an event described by this subsection, the department shall make a reasonable effort to notify a parent of a child in the managing conservatorship of the department of:

(1) a significant change in medical condition of the child;

(2) the enrollment or participation of the child in a drug research program under Section 266.0041; and

(3) an initial prescription of a psychotropic medication.

(d–1) Except as provided by Subsection (d–2), as soon as possible but not later than 24 hours after a change in placement of a child in the conservatorship of the department, the department shall give notice of the placement change to the managed care organization that contracts with the commission to provide health care services to the child under the STAR Health program. The managed care organization shall give notice of the placement change to the primary care physician listed in the child's health passport before the end of the second business day after the day the organization receives the notification from the department.

(d–2) In this subsection, "catchment area" has the meaning assigned by Section 264.152. In a catchment area in which community-based care has been implemented, the single source continuum contractor that has contracted with the commission to provide foster care services in that catchment area shall, as soon as possible but not later than 24 hours after a change in placement of a child in the conservatorship of the department, give notice of the placement change to the managed care organization that contracts with the commission to provide health care services to the child under the STAR Health program. The managed care organization shall give notice of the placement change to the child's primary care physician in accordance with Subsection (d–1).

(e) Not later than 48 hours before the department changes the residential child-care facility of a child in the managing conservatorship of the department, the department shall provide notice of the change to:

(1) the child's parent;

(2) an attorney ad litem appointed for the child under Chapter 107;

(3) a guardian ad litem appointed for the child under Chapter 107;

(4) a volunteer advocate appointed for the child under Chapter 107; and

(5) the licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee.

(f) Except as provided by Subsection (d–1), as soon as possible but not later than the 10th day after the date the department becomes aware of a significant event affecting a child in the conservatorship of the department, the department shall provide notice of the significant event to:

(1) the child's parent;

(2) an attorney ad litem appointed for the child under Chapter 107;

(3) a guardian ad litem appointed for the child under Chapter 107;

(4) a volunteer advocate appointed for the child under Chapter 107;

(5) the licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;

(6) a foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and

(7) any other person determined by a court to have an interest in the child's welfare.

(g) For purposes of Subsection (f), if a hearing for the child is conducted during the 10-day notice period described by that subsection, the department shall provide notice of the significant event at the hearing.

(h) The department is not required to provide notice under this section to a parent of a child in the managing conservatorship of the department if:

(1) the department cannot locate the parent;

(2) a court has restricted the parent's access to the information;

(3) the child is in the permanent managing conservatorship of the department and the parent has not participated in the child's case for at least six months despite the department's efforts to involve the parent;

(4) the parent's rights have been terminated; or

(5) the department has documented in the child's case file that it is not in the best interest of the child to involve the parent in case planning.

(i) The department is not required to provide notice of a significant event under this section to the child-placing agency responsible for the placement of a child in the managing conservatorship of the department, a foster parent, a prospective adoptive parent, a relative of the child providing care to the child, or the director of the group home or general residential operation where the child resides if that agency or individual is required under a contract or other agreement to provide notice of the significant event to the department.

(j) A person entitled to notice from the department under this section shall provide the department with current contact information, including the person's e-mail address and the telephone number at which the person may most easily be reached. The person shall update the person's contact information as soon as possible after a change to the information. The department is not required to provide notice under this section to a person who fails to provide contact information to the department. The department may rely on the most recently provided contact information in providing notice under this section.

(k) To facilitate timely notification under this section, a residential child-care facility contracting with the department for 24-hour care shall notify the department, in the time provided by the facility's contract, of a significant event for a child who is in the conservatorship of the department and residing in the facility.

(l) The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this section using a negotiated rulemaking process under Chapter 2008, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 722 (H.B. 1309), Sec. 1, eff. September 1, 2015. Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 48, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 33, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 14, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 4170, Sec. 7.005, eff. Sept. 1, 2019.

Sec. 264.019. COLLECTION AND REPORTING OF ALCOHOL AND CONTROLLED SUBSTANCE STATISTICS

(a) The department shall collect the following information and update the department's automated case tracking and information management system to allow caseworkers to record:

(1) the number of children reported to the department who at birth tested positive for the presence of alcohol or a controlled substance;

(2) the controlled substances for which the children described by Subdivision (1) tested positive;

(3) the number of children described by Subdivision (1) who were removed from their homes and have been diagnosed as having a disability or chronic medical condition resulting from the presence of alcohol or controlled substances; and

(4) the number of parents who test positive for the presence of a controlled substance during a department investigation of a report of abuse or neglect of the parent's child.

(b) Not later than November 1 of each year, the department shall:

(1) prepare for the preceding year a report containing:

(A) the information collected under Subsection (a); and

(B) the data collected under Section 531.02143, Government Code;

(2) post a copy of the report prepared under Subdivision (1) on the department's Internet website; and

(3) electronically submit to the legislature a copy of the report.

(c) The commissioner of the department shall adopt rules necessary to implement this section.

(d) The department is required to implement this section in a state fiscal biennium only if the commissioner of the department determines that the legislature has specifically appropriated an amount sufficient to update the department's automated case tracking and information management system. If the commissioner of the department does not make that determination, the department shall implement this section not later than the date of the department's next update of the automated case tracking and information management system.

Added by Acts 2019, 86th Leg., S.B. 195, Sec. 2, eff. Jan. 1, 2020.

SUBCHAPTER B. FOSTER CARE

Sec. 264.101. FOSTER CARE PAYMENTS

(a) The department may pay the cost of foster care for a child only if:

(1) the child has been placed by the department in a foster home or other residential child-care facility, as defined by Chapter 42, Human Resources Code, or in a comparable residential facility in another state; and

(2) the department:

(A) has initiated suit and been named conservator of the child; or

(B) has the duty of care, control, and custody after taking possession of the child in an emergency without a prior court order as authorized by this subtitle.

(a–1) The department shall continue to pay the cost of foster care for a child for whom the department provides care, including medical care, until the last day of the month in which the child attains the age of 18. The department shall continue to pay the cost of foster care for a child after the month in which the child attains the age of 18 as long as the child is:

(1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate;

(2) regularly attending an institution of higher education or a postsecondary vocational or technical program;

(3) participating in a program or activity that promotes, or removes barriers to, employment;

(4) employed for at least 80 hours a month; or

(5) incapable of performing the activities described by Subdivisions (1)–(4) due to a documented medical condition.

(a–2) The department shall continue to pay the cost of foster care under:

(1) Subsection (a–1)(1) until the last day of the month in which the child attains the age of 22; and

(2) Subsections (a–1)(2)–(5) until the last day of the month the child attains the age of 21.

(b) The department may not pay the cost of protective foster care for a child for whom the department has been named managing conservator under an order rendered solely under Section 161.001(b)(1)(J).

(c) The payment of foster care, including medical care, for a child as authorized under this subchapter shall be made without regard to the child's eligibility for federally funded care.

(d) The executive commissioner may adopt rules that establish criteria and guidelines for the payment of foster care, including medical care, for a child and for providing care for a child after the child becomes 18 years of age if the child meets the requirements for continued foster care under Subsection (a–1).

(d–1) The executive commissioner may adopt rules that prescribe the maximum amount of state money that a residential child-care facility may spend on nondirect residential services, including administrative services. The commission shall recover the money that exceeds the maximum amount established under this subsection.

(e) The department may accept and spend funds available from any source to pay for foster care, including medical care, for a child in the department's care.

(f) In this section, "child" means a person who:

(1) is under 22 years of age and for whom the department has been appointed managing conservator of the child before the date the child became 18 years of age; or

(2) is the responsibility of an agency with which the department has entered into an agreement to provide care and supervision of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 27, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 183 (H.B. 614), Sec. 1, eff. May 27, 2005. Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.45, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 6, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(b), eff. October 1, 2010. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.188, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 49, eff. September 1, 2015.

Sec. 264.1015. LIABILITY OF CHILD'S ESTATE FOR FOSTER CARE

(a) The cost of foster care provided for a child, including medical care, is an obligation of the estate of the child and the estate is liable to the department for the cost of the care.

(b) The department may take action to recover from the estate of the child the cost of foster care for the child.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 28, eff. Sept. 1, 1997.

Sec. 264.102. COUNTY CONTRACTS

(a) The department may contract with a county commissioners court to administer the funds authorized by this subchapter for eligible children in the county and may require county participation.

(b) The payments provided by this subchapter do not abrogate the responsibility of a county to provide child welfare services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 264.103. DIRECT PAYMENTS

The department may make direct payments for foster care to a foster parent residing in a county with which the department does not have a contract authorized by Section 264.102.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 264.104. PARENT OR GUARDIAN LIABILITY

(a) The parent or guardian of a child is liable to the state or to the county for a payment made by the state or county for foster care of a child under this subchapter.

(b) The cost of foster care for a child, including medical care, is a legal obligation of the child's parents, and the estate of a parent of the child is liable to the department for payment of the costs.

(c) The funds collected by the state under this section shall be used by the department for child welfare services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 29, eff. Sept. 1, 1997.

Sec. 264.1061. FOSTER PARENT PERFORMANCE

The department shall monitor the performance of a foster parent who has been verified by the department in the department's capacity as a child-placing agency. The method under which performance is monitored must include the use of objective criteria by which the foster parent's performance may be assessed. The department shall include references to the criteria in a written agreement between the department and the foster parent concerning the foster parent's services.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 92, eff. Sept. 1, 1997.

Sec. 264.107. PLACEMENT OF CHILDREN

(a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(25), eff. September 1, 2015.

(b) The department shall use an application or assessment developed by the department in coordination with interested parties for the placement of children in contract residential care.

(c) In selecting a placement for a child, the department shall consider whether the placement is in the child's best interest. In determining whether a placement is in a child's best interest, the department shall consider whether the placement:

(1) is the least restrictive setting for the child;

(2) is the closest in geographic proximity to the child's home;

(3) is the most able to meet the identified needs of the child; and

(4) satisfies any expressed interests of the child relating to placement, when developmentally appropriate.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(25), eff. September 1, 2015.

(e) In making placement decisions, the department shall:

(1) except when making an emergency placement that does not allow time for the required consultations, consult with the child's caseworker, attorney ad litem, and guardian ad litem and with any court-appointed volunteer advocate for the child; and

(2) use clinical protocols to match a child to the most appropriate placement resource.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 1.203(11), eff. April 2, 2015.

(g) If the department is unable to find an appropriate placement for a child, an employee of the department who has on file a background and criminal history check may provide temporary emergency care for the child. An employee may not provide emergency care under this subsection in the employee's residence. The department shall provide notice to the court for a child placed in temporary care under this subsection not later than the next business day after the date the child is placed in temporary care.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.48, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 14, eff. September 1, 2007. Acts 2013, 83rd Leg., R.S., Ch. 193 (S.B. 425), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.189, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.203(11), eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 50, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(25), eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 1022 (H.B. 1542), Sec. 4, eff. Sept. 1, 2017.

Sec. 264.1072. EDUCATIONAL STABILITY

The department shall develop, in accordance with 42 U.S.C. Section 675, a plan to ensure the educational stability of a foster child.

Added by Acts 2013, 83rd Leg., R.S., Ch. 688 (H.B. 2619), Sec. 7, eff. September 1, 2013.

Sec. 264.1075. ASSESSING NEEDS OF CHILD

(a) On removing a child from the child's home, the department shall use assessment services provided by a child-care facility, a child-placing agency, or the child's medical home during the initial substitute care placement. The assessment may be used to determine the most appropriate substitute care placement for the child, if needed.

(b) As soon as possible after a child is placed in the managing conservatorship of the department, the department shall assess whether the child has a developmental or intellectual disability.

(c) If the assessment required by Subsection (b) indicates that the child might have an intellectual disability, the department shall ensure that a referral for a determination of intellectual disability is made as soon as possible and that the determination is conducted by an authorized provider before the date of the child's 16th birthday, if practicable. If the child is placed in the managing conservatorship of the department after the child's 16th birthday, the determination of intellectual disability must be conducted as soon as possible after the assessment required by Subsection (b). In this subsection, "authorized provider" has the meaning assigned by Section 593.004, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 93, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.49, eff. September 1, 2005. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.190, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 51, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 3, eff. Sept. 1, 2017.

Sec. 264.1076. MEDICAL EXAMINATION REQUIRED

(a) This section applies only to a child who has been taken into the conservatorship of the department and remains in the conservatorship of the department for more than three business days.

(b) The department shall ensure that each child described by Subsection (a) receives an initial medical examination from a physician or other health care provider authorized under state law to conduct medical examinations not later than the end of the third business day after the date the child is removed from the child's home, if the child:

(1) is removed as the result of sexual abuse, physical abuse, or an obvious physical injury to the child; or

(2) has a chronic medical condition, a medically complex condition, or a diagnosed mental illness.

(c) Notwithstanding Subsection (b), the department shall ensure that any child who enters the conservatorship of the department receives any necessary emergency medical care as soon as possible.

(d) A physician or other health care provider conducting an examination under Subsection (b) may not administer a vaccination as part of the examination without parental consent, except that a physician or other health care provider may administer a tetanus vaccination to a child in a commercially available preparation if the physician or other health care provider determines that an emergency circumstance

requires the administration of the vaccination. The prohibition on the administration of a vaccination under this subsection does not apply after the department has been named managing conservator of the child after a hearing conducted under Subchapter C, Chapter 262.

(e) Whenever possible, the department shall schedule the medical examination for a child before the last business day of the appropriate time frame provided under Subsection (b).

(f) The department shall collaborate with the commission and selected physicians and other health care providers authorized under state law to conduct medical examinations to develop guidelines for the medical examination conducted under this section, including guidelines on the components to be included in the examination. The guidelines developed under this subsection must provide assistance and guidance regarding:

(1) assessing a child for:

(A) signs and symptoms of child abuse and neglect;

(B) the presence of acute or chronic illness; and

(C) signs of acute or severe mental health conditions;

(2) monitoring a child's adjustment to being in the conservatorship of the department;

(3) ensuring a child has necessary medical equipment and any medication prescribed to the child or needed by the child; and

(4) providing appropriate support and education to a child's caregivers.

(g) Notwithstanding any other law, the guidelines developed under Subsection (f) do not create a standard of care for a physician or other health care provider authorized under state law to conduct medical examinations, and a physician or other health care provider may not be subject to criminal, civil, or administrative penalty or civil liability for failure to adhere to the guidelines.

(h) The department shall make a good faith effort to contact a child's primary care physician to ensure continuity of care for the child regarding medication prescribed to the child and the treatment of any chronic medical condition.

(i) Not later than December 31, 2019, the department shall submit a report to the standing committees of the house of representatives and the senate with primary jurisdiction over child protective services and foster care evaluating the statewide implementation of the medical examination required by this section. The report must include the level of compliance with the requirements of this section in each region of the state.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 15(a), eff. Sept. 1, 2017.

ANNOTATIONS

In re Womack, 549 S.W.3d 760 (Tex. App.—Waco 2017, orig. proceeding). TDFPS could not consent to immunizations for the child when the department had actual knowledge that the parents of the child had refused to consent to such immunizations.

Sec. 264.1085. Foster Care Placement in Compliance with Federal Law Required

The department or a licensed child-placing agency making a foster care placement shall comply with the Multiethnic Placement Act of 1994 (42 U.S.C. Section 1996b).

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 52, eff. September 1, 2015.

Sec. 264.109. ASSIGNMENT OF SUPPORT RIGHTS IN SUBSTITUTE CARE CASES

(a) The placement of a child in substitute care by the department constitutes an assignment to the state of any support rights attributable to the child as of the date the child is placed in substitute care.

(b) If a child placed by the department in substitute care is entitled under federal law to Title IV-D child support enforcement services without the requirement of an application for services, the department shall immediately refer the case to the Title IV-D agency. If an application for Title IV-D services is required and the department has been named managing conservator of the child, then an authorized representative of the department shall be the designated individual entitled to apply for services on behalf of the child and shall promptly apply for the services.

(c) The department and the Title IV-D agency shall execute a memorandum of understanding for the implementation of the provisions of this section and for the allocation between the department and the agency, consistent with federal laws and regulations, of any child support funds recovered by the Title IV-D agency in substitute care cases. All child support funds recovered under this section and retained by the department or the Title IV-D agency and any federal matching or incentive funds resulting from child support collection efforts in substitute care cases shall be in excess of amounts otherwise appropriated to either the department or the Title IV-D agency by the legislature.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 117, eff. Sept. 1, 1995.

Sec. 264.110. PROSPECTIVE FOSTER OR ADOPTIVE PARENT STATEMENT

(a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(28), eff. September 1, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(28), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(28), eff. September 1, 2015.

(d) Before a child may be placed with a foster or adoptive parent, the prospective foster or adoptive parent must sign a written statement in which the prospective foster or adoptive parent agrees to the immediate removal of the child by the department under circumstances determined by the department.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(28), eff. September 1, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(28), eff. September 1, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(28), eff. September 1, 2015.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(28), eff. September 1, 2015.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 8, eff. Sept. 1, 1995. Renumbered from Family Code Sec. 264.109 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(30), eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.192, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 53, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 54, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(28), eff. September 1, 2015.

Sec. 264.112. REPORT ON CHILDREN IN SUBSTITUTE CARE

(a) The department shall report the status for children in substitute care to the executive commissioner at least once every 12 months.

(b) The report shall analyze the length of time each child has been in substitute care and the barriers to placing the child for adoption or returning the child to the child's parent or parents.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 18, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.193, eff. April 2, 2015.

Sec. 264.113. FOSTER PARENT RECRUITMENT

(a) In this section, "faith-based organization" means a religious or denominational institution or organization, including an organization operated for religious, educational, or charitable purposes and operated, supervised, or controlled, in whole or in part, by or in connection with a religious organization.

(b) The department shall develop a program to recruit and retain foster parents from faith-based organizations. As part of the program, the department shall:

(1) collaborate with faith-based organizations to inform prospective foster parents about the department's need for foster parents, the requirements for becoming a foster parent, and any other aspect of the foster care program that is necessary to recruit foster parents;

(2) provide training for prospective foster parents recruited under this section; and

(3) identify and recommend ways in which faith-based organizations may support persons as they are recruited, are trained, and serve as foster parents.

(c) The department shall work with OneStar Foundation to expand the program described by Subsection (b) to increase the number of foster families available for the department and its private providers. In cooperation with the department, OneStar Foundation may provide training and technical assistance to establish networks and services in faith-based organizations based on best practices for supporting prospective and current foster families.

(d) The department shall work with the Department of Assistive and Rehabilitative Services to recruit foster parents and adoptive parents who have skills, training, or experience suitable to care for children with hearing impairments.

Added by Acts 2003, 78th Leg., ch. 957, Sec. 1, eff. June 20, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 16, eff. September 1, 2007.

Sec. 264.114. IMMUNITY FROM LIABILITY; ADVERSE DEPARTMENTAL ACTION PROHIBITED

(a) A faith-based organization, including the organization's employees and volunteers, that participates in a program under this chapter is subject to civil liability as provided by Chapter 84, Civil Practice and Remedies Code.

(b) A faith-based organization that provides financial or other assistance to a foster parent or to a member of the foster parent's household is not liable for damages arising out of the conduct of the foster parent or a member of the foster parent's household.

(c) A foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed child placing agency caring for a child in the managing conservatorship of the department is not liable for harm caused to the child resulting from the child's participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child's participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent.

(d) A licensed child placing agency is not subject to adverse action by the department, including contractual action or licensing or other regulatory action, arising out of the conduct of a foster parent who has exercised the standard of care of a reasonable and prudent parent.

Added by Acts 2003, 78th Leg., ch. 957, Sec. 1, eff. June 20, 2003. Amended by: Acts 2015, 84th Leg., R.S., Ch. 262 (S.B. 1407), Sec. 5, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 262 (S.B. 1407), Sec. 6, eff. September 1, 2015.

Sec. 264.115. RETURNING CHILD TO SCHOOL

(a) If the department takes possession of a child under Chapter 262 during the school year, the department shall ensure that the child returns to school not later than the third school day after the date an order is rendered providing for possession of the child by the department, unless the child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible.

(b) If a child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance in school infeasible, the department shall notify the school in writing that the child is unable to attend school. If the child's physical or mental condition improves so that the child's attendance in school is feasible, the department shall ensure that the child immediately returns to school.

Added by Acts 2003, 78th Leg., ch. 234, Sec. 1, eff. Sept. 1, 2003. Renumbered from Family Code, Section 264.113 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(25), eff. September 1, 2005.

Sec. 264.116. TEXAS FOSTER GRANDPARENT MENTORS

(a) The department shall make the active recruitment and inclusion of senior citizens a priority in ongoing mentoring initiatives.

(b) An individual who volunteers as a mentor is subject to state and national criminal background checks in accordance with Sections 411.087 and 411.114, Government Code.

(c) The department shall require foster parents or employees of residential child-care facilities to provide appropriate supervision over individuals who serve as mentors during their participation in the mentoring initiative.

(d) Chapter 2109, Government Code, applies to the mentoring initiative described by this section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.50(a), eff. September 1, 2005.

Sec. 264.118. ANNUAL SURVEY

(a) The department shall collect and report service and outcome information for certain current and former foster care youth for use in the National Youth in Transition Database as required by 42 U.S.C. Section 677(f) and 45 C.F.R. Section 1356.80 et seq.

(b) The identity of each child participating in a department survey is confidential and not subject to public disclosure under Chapter 552, Government Code. The department shall adopt procedures to ensure that the identity of each child participating in a department survey remains confidential.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.50(a), eff. September 1, 2005. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 598 (S.B. 218), Sec. 7, eff. September 1, 2011.

Sec. 264.120. DISCHARGE NOTICE

(a) Except as provided by Subsection (b), a substitute care provider with whom the department contracts to provide substitute care services for a child shall include in a discharge notice the following information:

(1) the reason for the child's discharge; and

(2) the provider's recommendation regarding a future placement for the child that would increase the child's opportunity to attain a stable placement.

(b) In an emergency situation in which the department is required under the terms of the contract with the substitute care provider to remove a child within 24 hours after receiving the discharge notice, the provider must provide the information required by Subsection (a) to the department not later than 48 hours after the provider sends the discharge notice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1324 (S.B. 534), Sec. 4, eff. September 1, 2013.

Sec. 264.121. TRANSITIONAL LIVING SERVICES PROGRAM

(a) The department shall address the unique challenges facing foster children in the conservatorship of the department who must transition to independent living by:

(1) expanding efforts to improve transition planning and increasing the availability of transitional family group decision-making to all youth age 14 or older in the department's permanent managing conservatorship, including enrolling the youth in the Preparation for Adult Living Program before the age of 16;

(2) coordinating with the commission to obtain authority, to the extent allowed by federal law, the state Medicaid plan, the Title IV-E state plan, and any waiver or amendment to either plan, necessary to:

(A) extend foster care eligibility and transition services for youth up to age 21 and develop policy to permit eligible youth to return to foster care as necessary to achieve the goals of the Transitional Living Services Program; and

(B) extend Medicaid coverage for foster care youth and former foster care youth up to age 21 with a single application at the time the youth leaves foster care; and

(3) entering into cooperative agreements with the Texas Workforce Commission and local workforce development boards to further the objectives of the Preparation for Adult Living Program. The department, the Texas Workforce Commission, and the local workforce development boards shall ensure that services are prioritized and targeted to meet the needs of foster care and former foster care children and that such services will include, where feasible, referrals for short-term stays for youth needing housing.

(a–1) The department shall require a foster care provider to provide or assist youth who are age 14 or older in obtaining experiential life-skills training to improve their transition to independent living. Experiential life-skills training must be tailored to a youth's skills and abilities and must include training in practical activities that include grocery shopping, meal preparation and cooking, performing basic household tasks, and, when appropriate, using public transportation.

(a–2) The experiential life-skills training under Subsection (a–1) must include:

(1) a financial literacy education program **developed in collaboration with the Office of Consumer Credit Commissioner and the State Securities Board** that:

(A) ~~(I)~~ includes instruction on:

(i) ~~(A)~~ obtaining and interpreting a credit score;

(ii) ~~(B)~~ protecting, repairing, and improving a credit score;

(iii) ~~(C)~~ avoiding predatory lending practices;

(iv) ~~(D)~~ saving money and accomplishing financial goals through prudent financial management practices;

(v) ~~(E)~~ using basic banking and accounting skills, including balancing a checkbook;

(vi) ~~(F)~~ using debit and credit cards responsibly;

(vii) ~~(G)~~ understanding a paycheck and items withheld from a paycheck; ~~and~~

(viii) understanding the time requirements and process for filing federal taxes;

(ix) ~~(H)~~ protecting financial, credit, and **personally** identifying information in personal and professional relationships **and online**;

(x) forms of identity and credit theft; and

(xi) using insurance to protect against the risk of financial loss; and

(B) ~~(2)~~ assists a youth who has a source of income to:

(i) establish a savings plan and, if available, a savings account that the youth can independently manage; **and**

(ii) **prepare a monthly budget that includes the following expenses:**

(a) rent based on the monthly rent for an apartment advertised for lease during the preceding month;

(b) utilities based on a reasonable utility bill in the area in which the youth resides;

(c) telephone service based on a reasonable bill for telephone service in the area in which the youth resides;

(d) Internet service based on a reasonable bill for Internet service in the area in which the youth resides; and

(e) other reasonable monthly expenses; and

(2) for youth who are 17 years of age or older, lessons related to:

(A) insurance, including applying for and obtaining automobile insurance and residential property insurance, including tenants insurance; and

(B) civic engagement, including the process for registering to vote, the places to vote, and resources for information regarding upcoming elections.

(a–3) The department shall conduct an independent living skills assessment for all youth in the department's conservatorship who are 16 years of age or older.

(a–4) The department shall conduct an independent living skills assessment for all youth in the department's permanent managing conservatorship who are at least 14 years of age but younger than 16 years of age.

(a–5) The department shall annually update the assessment for each youth assessed under Subsections (a–3) and (a–4) to determine the independent living skills the youth learned during the preceding year to ensure that the department's obligation to prepare the youth for independent living has been met. The department shall conduct the annual update through the youth's plan of service in coordination with the youth, the youth's caseworker, the staff of the Preparation for Adult Living Program, and the youth's caregiver.

(a–6) The department, in coordination with stakeholders, shall develop a plan to standardize the curriculum for the Preparation for Adult Living Program that ensures that youth 14 years of age or older enrolled in the program receive relevant and age-appropriate information and training. The department shall report the plan to the legislature not later than December 1, 2018.

(b) In this section:

(1) "Local workforce development board" means a local workforce development board created under Chapter 2308, Government Code.

(2) "Preparation for Adult Living Program" means a program administered by the department as a component of the Transitional Living Services Program and includes independent living skills assessment, short-term financial assistance, basic self-help skills, and life-skills development and training regarding money management, health and wellness, job skills, planning for the future, housing and transportation, and interpersonal skills.

(3) "Transitional Living Services Program" means a program, administered by the department in accordance with department rules and state and federal law, for youth who are age 14 or older but not more than 21 years of age and are currently or were formerly in foster care, that assists youth in transitioning from foster care to independent living. The program provides transitional living services, Preparation for Adult Living Program services, and Education and Training Voucher Program services.

(c) At the time a child enters the Preparation for Adult Living Program, the department shall provide an information booklet to the child and the foster parent describing the program and the benefits available to the child, including extended Medicaid coverage until age 21, priority status with the Texas Workforce Commission, and the exemption from the payment of tuition and fees at institutions of higher education as defined by Section 61.003, Education Code. The information booklet provided to the child and the foster parent shall be provided in the primary language spoken by that individual.

(d) The department shall allow a youth who is at least 18 years of age to receive transitional living services, other than foster care benefits, while residing with a person who was previously designated as a perpetrator of abuse or neglect if the department determines that despite the person's prior history the person does not pose a threat to the health and safety of the youth.

(e) The department shall ensure that each youth acquires a copy and a certified copy of the youth's birth certificate, a social security card or replacement social security card, as appropriate, and a personal identification certificate under Chapter 521, Transportation Code, on or before the date on which the youth turns 16 years of age. The department shall designate one or more employees in the Preparation for Adult Living Program as the contact person to assist a youth who has not been able to obtain the documents described by this subsection in a timely manner from the youth's primary caseworker. The department shall ensure that:

(1) all youth who are age 16 or older are provided with the contact information for the designated employees; and

(2) a youth who misplaces a document provided under this subsection receives assistance in obtaining a replacement document or information on how to obtain a duplicate copy, as appropriate.

(e–1) If, at the time a youth is discharged from foster care, the youth is at least 18 years of age or has had the disabilities of minority removed, the department shall provide to the youth, not later than the 30th day before the date the youth is discharged from foster care, the following information and documents unless the youth already has the information or document:

(1) the youth's birth certificate;

(2) the youth's immunization records;

(3) the information contained in the youth's health passport;

(4) a personal identification certificate under Chapter 521, Transportation Code;

(5) a social security card or a replacement social security card, if appropriate; and

(6) proof of enrollment in Medicaid, if appropriate.

(e–2) When providing a youth with a document required by Subsection (e–1), the department shall provide the youth with a copy and a certified copy of the document or with the original document, as applicable.

(e–3) When obtaining a copy of a birth certificate to provide to a foster youth or assisting a foster youth in obtaining a copy of a birth certificate, the department shall obtain the birth certificate from the state registrar. If the department is unable to obtain the birth certificate from the state registrar, the department may obtain the birth certificate from a local registrar or county clerk.

(f) The department shall require a person with whom the department contracts for transitional living services for foster youth to provide or assist youth in obtaining:

(1) housing services;

(2) job training and employment services;

(3) college preparation services;

(4) services that will assist youth in obtaining a general education development certificate;

(5) services that will assist youth in developing skills in food preparation;

(6) nutrition education that promotes healthy food choices;

(7) a savings or checking account if the youth is at least 18 years of age and has a source of income;

(8) mental health services;

(9) financial literacy education and civic engagement lessons required under Subsection (a–2); and

(10) ~~(8)~~ any other appropriate transitional living service identified by the department.

(g) For a youth taking prescription medication, the department shall ensure that the youth's transition plan includes provisions to assist the youth in managing the use of the medication and in managing the child's long-term physical and mental health needs after leaving foster care, including provisions that inform the youth about:

(1) the use of the medication;

(2) the resources that are available to assist the youth in managing the use of the medication; and

(3) informed consent and the provision of medical care in accordance with Section 266.010(l).

(h) An entity with which the department contracts for transitional living services for foster youth shall, when appropriate, partner with a community-based organization to assist the entity in providing the transitional living services.

(i) The department shall ensure that the transition plan for each youth 16 years of age or older includes provisions to assist the youth in managing the youth's housing needs after the youth leaves foster care, including provisions that:

(1) identify the cost of housing in relation to the youth's sources of income, including any benefits or rental assistance available to the youth;

(2) if the youth's housing goals include residing with family or friends, state that the department has addressed the following with the youth:

(A) the length of time the youth expects to stay in the housing arrangement;

(B) expectations for the youth regarding paying rent and meeting other household obligations;

(C) the youth's psychological and emotional needs, as applicable; and

(D) any potential conflicts with other household members, or any difficulties connected to the type of housing the youth is seeking, that may arise based on the youth's psychological and emotional needs;

(3) inform the youth about emergency shelters and housing resources, including supervised independent living and housing at colleges and universities, such as dormitories;

(4) require the department to review a common rental application with the youth and ensure that the youth possesses all of the documentation required to obtain rental housing; and

(5) identify any individuals who are able to serve as cosigners or references on the youth's applications for housing.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.51, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 17, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 407 (H.B. 1912), Sec. 1, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 407 (H.B. 1912), Sec. 2, eff. September 1, 2009. Acts 2013, 83rd Leg., R.S., Ch. 168 (S.B. 1589), Sec. 1, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 6, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 342 (H.B. 2111), Sec. 1, eff. June 14, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.194, eff. April 2, 2015. Acts 2015, 84th Leg., R.S., Ch. 81 (S.B. 1117), Sec. 1, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 55, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 56, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 7.004, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 7.005, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(18), eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 937 (S.B. 1758), Sec. 6, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 123, Sec. 1, eff. Sept. 1, 2019. Acts 2019, 86th Leg., H.B. 53, Sec. 1, eff. Sept. 1, 2019.

Section 8 of Acts 2019, 86th Leg., H.B. 123 states—

"The changes in law made by this Act apply to an application for a driver's license, personal identification certificate, or birth record submitted on or after the effective date of this Act. An application for a driver's license, personal identification certificate, or birth record submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose."

Section 2 of Acts 2019, 86th Leg., H.B. 53 states—

"The changes in law made by this Act apply only to a person who enters into a contract with the Department of Family and Protective Services to provide transitional living services for foster youth on or after the effective date of this Act."

Sec. 264.1211. CAREER DEVELOPMENT AND EDUCATION PROGRAM

(a) The department shall collaborate with local workforce development boards, foster care transition centers, community and technical colleges, schools, and any other appropriate workforce industry resources to create a program that:

(1) assists foster care youth and former foster care youth in obtaining:

(A) a high school diploma or a high school equivalency certificate; and

(B) industry certifications that are necessary for occupations that are in high demand;

(2) provides career guidance to foster care youth and former foster care youth; and

(3) informs foster care youth and former foster care youth about the tuition and fee waivers for institutions of higher education that are available under Section 54.366, Education Code.

(b) Not later than September 1, 2018, the department, in collaboration with the Texas Education Agency, shall produce a report on the program created under Subsection (a). The report must include recommendations for legislative or other action to further develop the program. The department shall submit the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with jurisdiction over education. This subsection expires September 1, 2019.

Added by Acts 2017, 85th Leg., R.S., Ch. 419 (S.B. 1220), Sec. 3, eff. June 1, 2017.

Sec. 264.1212. FACILITATION OF TRANSITION TO INSTITUTION OF HIGHER EDUCATION

(a) In this section, "community resource coordination group" means a coordination group established under a memorandum of understanding under Section 531.055, Government Code.

(b) A department employee who is a member of a community resource coordination group shall inform the group about the tuition and fee waivers for institutions of higher education that are available to eligible children in foster care under Section 54.366, Education Code.

(c) Each school district, in coordination with the department, shall facilitate the transition of each child enrolled in the district who is eligible for a tuition and fee waiver under Section 54.366, Education Code, and who is likely to be in the conservatorship of the department on the day preceding the child's 18th birthday to an institution of higher education by:

(1) assisting the child with the completion of any applications for admission or for financial aid;

(2) arranging and accompanying the child on campus visits;

(3) assisting the child in researching and applying for private or institution-sponsored scholarships;

(4) identifying whether the child is a candidate for appointment to a military academy;

(5) assisting the child in registering and preparing for college entrance examinations, including, subject to the availability of funds, arranging for the payment of any examination fees by the department; and

(6) coordinating contact between the child and a liaison officer designated under Section 61.0908, Education Code, for students who were formerly in the department's conservatorship.

Added by Acts 2017, 85th Leg., R.S., Ch. 333 (H.B. 928), Sec. 1, eff. June 1, 2017. Redesignated from Sec. 264.1211 by Acts 2019, 86th Leg., H.B. 4170, Sec. 21.001(16), eff. Sept. 1, 2019.

Sec. 264.1213. Records and Documents for Children Aging Out of Foster Care

The department in cooperation with volunteer advocates from a charitable organization described by Subchapter C, Chapter 107, and the Department of Public Safety shall develop procedures to ensure that a foster child obtains a driver's license or personal identification card before the child leaves the conservatorship of the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 1076 (H.B. 3338), Sec. 1, eff. June 15, 2017. Redesignated from Sec. 264.1211 by Acts 2019, 86th Leg., H.B. 4170, Sec. 21.001(17), eff. Sept. 1, 2019.

Sec. 264.122. Court Approval Required for Travel Outside United States by Child in Foster Care

(a) A child for whom the department has been appointed managing conservator and who has been placed in foster care may travel outside of the United States only if the person with whom the child has been placed has petitioned the court for, and the court has rendered an order granting, approval for the child to travel outside of the United States.

(b) The court shall provide notice to the department and to any other person entitled to notice in the suit if the court renders an order granting approval for the child to travel outside of the United States under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 18, eff. September 1, 2007.

Sec. 264.123. Reports Concerning Children Who Are Missing or Victims of Sex Trafficking

(a) If a child in the department's managing conservatorship is missing from the child's substitute care provider, including a child who is abducted or is a runaway, the department shall notify the following persons that the child is missing:

(1) the appropriate law enforcement agencies;

(2) the court with jurisdiction over the department's managing conservatorship of the child;

(3) the child's attorney ad litem;

(4) the child's guardian ad litem; and

(5) the child's parent unless the parent:

(A) cannot be located or contacted;

(B) has had the parent's parental rights terminated; or

(C) has executed an affidavit of relinquishment of parental rights.

(b) The department shall provide the notice required by Subsection (a) not later than 24 hours after the time the department learns that the child is missing or as soon as possible if a person entitled to notice under that subsection cannot be notified within 24 hours.

(c) If a child has been reported as a missing child under Subsection (a), the department shall notify the persons described by Subsection (a) when the child returns to the child's substitute care provider not later than 24 hours after the time the department learns that the child has returned or as soon as possible if a person entitled to notice cannot be notified within 24 hours.

(d) The department shall make continuing efforts to determine the location of a missing child until the child returns to substitute care, including:

(1) contacting on a monthly basis:

(A) the appropriate law enforcement agencies;

(B) the child's relatives;

(C) the child's former caregivers; and

(D) any state or local social service agency that may be providing services to the child; and

(2) conducting a supervisory-level review of the case on a quarterly basis if the child is 15 years of age or younger to determine whether sufficient efforts have been made to locate the child and whether other action is needed.

(e) The department shall document in the missing child's case record:

(1) the actions taken by the department to:

(A) determine the location of the child; and

(B) persuade the child to return to substitute care;

(2) any discussion during, and determination resulting from, the supervisory-level review under Subsection (d)(2);

(3) any discussion with law enforcement officials following the return of the child regarding the child's absence; and

(4) any discussion with the child described by Subsection (f).

(f) After a missing child returns to the child's substitute care provider, the department shall interview the child to determine the reasons why the child was missing, where the child stayed during the time the child was missing, and whether, while missing, the child was a victim of conduct that constitutes an offense under Section 20A.02(a)(7), Penal Code. The department shall report to an appropriate law enforcement agency any disclosure made by a child that indicates that the child was the victim of a crime during the time the child was missing. The department shall make a report under this subsection not later than 24 hours after the time the disclosure is made. The department is not required to interview a missing child under this subsection if, at the time the child returns, the department knows that the child was abducted and another agency is investigating the abduction.

(g) The department shall collect information on each child in the department's managing conservatorship who is missing from the child's substitute care provider and on each child who, while in the department's managing conservatorship, is a victim of conduct that constitutes an offense under Section 20A.02(a)(7), Penal Code. The collected information must include information on:

(1) whether the managing conservatorship of the department is temporary or permanent;

(2) the type of substitute care in which the child is placed; and

(3) the child's sex, age, race, and ethnicity and the department region in which the child resides.

(h) The department shall prepare an annual report on the information collected under Subsection (g) and make the report available on the department's Internet website. The report may not include any individually identifiable information regarding a child who is the subject of information in the report.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1130 (H.B. 943), Sec. 1, eff. September 1, 2011. Amended by: Acts 2015, 84th Leg., R.S., Ch. 713 (H.B. 1217), Sec. 2, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 713 (H.B. 1217), Sec. 3, eff. September 1, 2015.

Sec. 264.124. DAY CARE FOR FOSTER CHILD

(a) In this section, "day care" means the assessment, care, training, education, custody, treatment, or supervision of a foster child by a person other than the child's foster parent for less than 24 hours a day, but at least two hours a day, three or more days a week.

(b) The department, in accordance with department rules, shall implement a process to verify that each foster parent who is seeking monetary assistance from the department for day care for a foster child has attempted to find appropriate day-care services for the foster child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools. The department shall specify the documentation the foster parent must provide to the department to demonstrate compliance with the requirements established under this subsection.

(c) Except as provided by Subsection (d), the department may not provide monetary assistance to a foster parent for day care for a foster child unless the department receives the verification required under Subsection (b).

(d) The department may provide monetary assistance to a foster parent for a foster child without the verification required under Subsection (b) if the department determines the verification would prevent an emergency placement that is in the child's best interest.

Added by Acts 2013, 83rd Leg., R.S., Ch. 423 (S.B. 430), Sec. 1, eff. September 1, 2013. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.195, eff. April 2, 2015.

Sec. 264.125. AGE-APPROPRIATE NORMALCY ACTIVITIES; STANDARD OF CARE

(a) The department shall use its best efforts to normalize the lives of children in the managing conservatorship of the department by allowing substitute caregivers, without the department's prior approval, to make decisions similar to those a parent would be entitled to make regarding a child's participation in age-appropriate normalcy activities.

(b) In determining whether to allow a child in the managing conservatorship of the department to participate in an activity, a substitute caregiver must exercise the standard of care of a reasonable and prudent parent.

(c) The department shall adopt and implement policies consistent with this section promoting a substitute caregiver's ability to make decisions described by Subsection (a). The department shall identify and review any departmental policy or procedure that may impede a substitute caregiver's ability to make such decisions.

(d) The department shall require licensed child placing agency personnel, residential child care licensing staff, conservatorship caseworkers, and other persons as may be determined by the department to complete a course of training regarding:

(1) the importance of a child's participation in age-appropriate normalcy activities and the benefits of such activities to a child's well-being, mental health, and social, emotional, and developmental growth; and

(2) substitute caregiver decision-making under the standard of care of a reasonable and prudent parent.

Added by Acts 2015, 84th Leg., R.S., Ch. 262 (S.B. 1407), Sec. 7, eff. September 1, 2015.

For expiration of this section, see Subsection (h).

Sec. 264.1251. SUMMER INTERNSHIP PILOT PROGRAM

(a) The department shall establish a summer internship pilot program that provides foster youth with the opportunity to develop marketable job skills and obtain professional work experience through a summer internship with a participating business, nonprofit organization, or governmental entity.

(b) The department may collaborate with other state agencies, as appropriate, to establish the pilot program. The pilot program may be implemented in more than one department region.

(c) The department may enter into an agreement with one or more entities described by Subsection (a) to allow the entity to award internships to youth who participate in the pilot program. Internships provided under the pilot program may be paid or unpaid.

(d) Not later than April 1 of each year, the department shall select foster youth or former foster youth who are 15 years of age or older to participate in the pilot program. Each youth participating in the pilot program shall enter into an agreement with the organization awarding the internship and the department relating to the terms of the youth's internship.

(e) The department shall complete an evaluation of the pilot program not later than the second anniversary of the date the program begins.

(f) The department shall submit a report on the evaluation of the pilot program to the governor, the lieutenant governor, and the speaker of the house of representatives. The report must include:

(1) the number of youth who participated in the pilot program;

(2) the location and type of internships provided under the pilot program; and

(3) details of the department's efforts to recruit eligible youth to participate in the pilot program.

(g) The executive commissioner may adopt rules necessary to implement this section.

(h) This section expires September 1, 2021.

Added by Acts 2017, 85th Leg., R.S., Ch. 1029 (H.B. 1608), Sec. 1, eff. June 15, 2017.

For expiration of this section, see Subsection (e).

Sec. 264.1252. FOSTER PARENT RECRUITMENT STUDY

(a) In this section, "young adult caregiver" means a person who:

(1) is at least 21 years of age but younger than 36 years of age; and

(2) provides foster care for children who are 14 years of age and older.

(b) The department shall conduct a study on the feasibility of developing a program to recruit and provide training for young adult caregivers.

(c) The department shall complete the study not later than December 31, 2018. In evaluating the feasibility of the program, the department shall consider methods to recruit young adult caregivers and the potential impact that the program will have on the foster children participating in the program, including whether the program may result in:

(1) increased placement stability;

(2) fewer behavioral issues;

(3) fewer instances of foster children running away from a placement;

(4) increased satisfactory academic progress in school;

(5) increased acquisition of independent living skills; and

(6) an improved sense of well-being.

(d) The department shall report the results of the study to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature as soon as possible after the study is completed.

(e) This section expires September 1, 2019.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 16(a), eff. Sept. 1, 2017.

Text of section as added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 4

For text of section as added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 17, see other Sec. 264.1261.

Sec. 264.1261. FOSTER CARE CAPACITY NEEDS PLAN

(a) In this section, "community-based foster care" means the redesigned foster care services system required by Chapter 598 (S.B. 218), Acts of the 82nd Legislature, Regular Session, 2011.

(b) Appropriate department management personnel from a child protective services region in which community-based foster care has not been implemented, in collaboration with foster care providers, faith-based entities, and child advocates in that region, shall use data collected by the department on foster care capacity needs and availability of each type of foster care and kinship placement in the region to create a plan to address the substitute care capacity needs in the region. The plan must identify both short-term and long-term goals and strategies for addressing those capacity needs.

(c) A foster care capacity needs plan developed under Subsection (b) must be:

(1) submitted to and approved by the commissioner; and

(2) updated annually.

(d) The department shall publish each initial foster care capacity needs plan and each annual update to a plan on the department's Internet website.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 4, eff. Sept. 1, 2017.

Text of section as added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 17

For text of section as added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 4, see other Sec. 264.1261.

Sec. 264.1261. FOSTER CARE CAPACITY NEEDS PLAN

(a) In this section, "community-based care" has the meaning assigned by Section 264.152.

(b) Appropriate department management personnel from a child protective services region in which community-based care has not been implemented, in collaboration with foster care providers, faith-based entities, and child advocates in that region, shall use data collected by the department on foster care capacity needs and availability of each type of foster care and kinship placement in the region to create a plan to address the substitute care capacity needs in the region. The plan must identify both short-term and long-term goals and strategies for addressing those capacity needs.

(c) A foster care capacity needs plan developed under Subsection (b) must be:

(1) submitted to and approved by the commissioner; and

(2) updated annually.

(d) The department shall publish each initial foster care capacity needs plan and each annual update to a plan on the department's Internet website.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 17, eff. Sept. 1, 2017.

Sec. 264.128. SINGLE CHILD PLAN OF SERVICE INITIATIVE

(a) In this section, "community-based care" has the meaning assigned by Section 264.152.

(b) In regions of the state where community-based care has not been implemented, the department shall:

(1) collaborate with child-placing agencies to implement the single child plan of service model developed under the single child plan of service initiative; and

(2) ensure that a single child plan of service is developed for each child in foster care in those regions.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 17(a), eff. Sept. 1, 2017.

Sec. 264.130. PREGNANCY AND PARENTING INFORMATION

The department at developmentally appropriate stages shall ensure that children in the managing conservatorship of the department who are pregnant or who are minor parents receive information on and support in providing safe environments for children, including information and support regarding:

(1) safe sleeping arrangements;

(2) suggestions for childproofing potentially dangerous settings in a home;

(3) child development and methods to cope with challenging behaviors;

(4) selection of appropriate substitute caregivers;

(5) a child's early brain development, including the importance of meeting an infant's developmental needs by providing positive experiences and avoiding adverse experiences;

(6) the importance of paternal involvement in a child's life and methods for coparenting;

(7) the benefits of reading, singing, and talking to young children;

(8) the importance of prenatal and postpartum care for both the mother and infant, including the impact of and signs for perinatal mood disorders;

(9) infant nutrition and the importance of breastfeeding; and

(10) healthy relationships, including the prevention of intimate partner violence.

Added by Acts 2019, 86th Leg., H.B. 475, Sec. 1, eff. Sept. 1, 2019.

SUBCHAPTER B–1. COMMUNITY-BASED CARE

Sec. 264.151. LEGISLATIVE INTENT

(a) It is the intent of the legislature that the department contract with community-based nonprofit and local governmental entities that have the ability to provide child welfare services. The services provided by the entities must include direct case management to ensure child safety, permanency, and well-being, in accordance with state and federal child welfare goals.

(b) It is the intent of the legislature that the provision of community-based care for children be implemented with measurable goals relating to:

(1) the safety of children in placements;

(2) the placement of children in each child's home community;

(3) the provision of services to children in the least restrictive environment possible and, if possible, in a family home environment;

(4) minimal placement changes for children;

(5) the maintenance of contact between children and their families and other important persons;

(6) the placement of children with siblings;

(7) the provision of services that respect each child's culture;

(8) the preparation of children and youth in foster care for adulthood;

(9) the provision of opportunities, experiences, and activities for children and youth in foster care that are available to children and youth who are not in foster care;

(10) the participation by children and youth in making decisions relating to their own lives;

(11) the reunification of children with the biological parents of the children when possible; and

(12) the promotion of the placement of children with relative or kinship caregivers if reunification is not possible.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.152. DEFINITIONS

Except as otherwise provided, in this subchapter:

(1) "Alternative caregiver" means a person who is not the foster parent of the child and who provides temporary care for the child for more than 12 hours but less than 60 days.

(2) "Case management" means the provision of case management services to a child for whom the department has been appointed temporary or permanent managing conservator or to the child's family, a young adult in extended foster care, a relative or kinship caregiver, or a child who has been placed in the catchment area through the Interstate Compact on the Placement of Children, and includes:

(A) caseworker visits with the child;

(B) family and caregiver visits;

(C) convening and conducting permanency planning meetings;

(D) the development and revision of child and family plans of service, including a permanency plan and goals for a child or young adult in care;

(E) the coordination and monitoring of services required by the child and the child's family;

(F) the assumption of court-related duties regarding the child, including:

(i) providing any required notifications or consultations;

(ii) preparing court reports;

(iii) attending judicial and permanency hearings, trials, and mediations;

(iv) complying with applicable court orders; and

(v) ensuring the child is progressing toward the goal of permanency within state and federally mandated guidelines; and

(G) any other function or service that the department determines necessary to allow a single source continuum contractor to assume responsibility for case management.

(3) "Catchment area" means a geographic service area for providing child protective services that is identified as part of community-based care.

(4) "Community-based care" means the foster care redesign required by Chapter 598 (S.B. 218), Acts of the 82nd Legislature, Regular Session, 2011, as designed and implemented in accordance with the plan required by Section 264.153.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.153. COMMUNITY-BASED CARE IMPLEMENTATION PLAN

(a) The department shall develop and maintain a plan for implementing community-based care. The plan must:

(1) describe the department's expectations, goals, and approach to implementing community-based care;

(2) include a timeline for implementing community-based care throughout this state, any limitations related to the implementation, and a progressive intervention plan and a contingency plan to provide continuity of the delivery of foster care services and services for relative and kinship caregivers if a contract with a single source continuum contractor ends prematurely;

(3) delineate and define the case management roles and responsibilities of the department and the department's contractors and the duties, employees, and related funding that will be transferred to the contractor by the department;

(4) identify any training needs and include long-range and continuous plans for training and cross-training staff, including plans to train caseworkers using the standardized curriculum created by the human trafficking prevention task force under Section 402.035(d)(6), Government Code, as that section existed on August 31, 2017;

(5) include a plan for evaluating the costs and tasks associated with each contract procurement, including the initial and ongoing contract costs for the department and contractor;

(6) include the department's contract monitoring approach and a plan for evaluating the performance of each contractor and the community-based care system as a whole that includes an independent evaluation of each contractor's processes and fiscal and qualitative outcomes; and

(7) include a report on transition issues resulting from implementation of community-based care.

(b) The department shall annually:

(1) update the implementation plan developed under this section and post the updated plan on the department's Internet website; and

(2) post on the department's Internet website the progress the department has made toward its goals for implementing community-based care.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 57, eff. September 1, 2015. Redesignated from Sec. 264.126 and amended by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(b), eff. Sept. 1, 2017.

Sec. 264.154. QUALIFICATIONS OF SINGLE SOURCE CONTINUUM CONTRACTOR; SELECTION

(a) To enter into a contract with the commission or department to serve as a single source continuum contractor to provide foster care service delivery, an entity must be a nonprofit entity that has an organizational mission focused on child welfare or a governmental entity.

(b) In selecting a single source continuum contractor, the department shall consider whether a prospective contractor for a catchment area has demonstrated experience in providing services to children and families in the catchment area.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.155. REQUIRED CONTRACT PROVISIONS

A contract with a single source continuum contractor to provide community-based care services in a catchment area must include provisions that:

(1) establish a timeline for the implementation of community-based care in the catchment area, including a timeline for implementing:

(A) case management services for children, families, and relative and kinship caregivers receiving services in the catchment area; and

(B) family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family;

(2) establish conditions for the single source continuum contractor's access to relevant department data and require the participation of the contractor in the data access and standards governance council created under Section 264.159;

(3) require the single source continuum contractor to create a single process for the training and use of alternative caregivers for all child-placing agencies in the catchment area to facilitate reciprocity of licenses for alternative caregivers between agencies, including respite and overnight care providers, as those terms are defined by department rule;

(4) require the single source continuum contractor to maintain a diverse network of service providers that offer a range of foster capacity options and that can accommodate children from diverse cultural backgrounds;

(5) allow the department to conduct a performance review of the contractor beginning 18 months after the contractor has begun providing case management and family reunification support services to all children and families in the catchment area and determine if the contractor has achieved any performance outcomes specified in the contract;

(6) following the review under Subdivision (5), allow the department to:

(A) impose financial penalties on the contractor for failing to meet any specified performance outcomes; or

(B) award financial incentives to the contractor for exceeding any specified performance outcomes;

(7) require the contractor to give preference for employment to employees of the department:

(A) whose position at the department is impacted by the implementation of community-based care; and

(B) who are considered by the department to be employees in good standing;

(8) require the contractor to provide preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area, including any of the following:

(A) community faith-based entities;

(B) the judiciary;

(C) court-appointed special advocates;

(D) child advocacy centers;

(E) service providers;

(F) foster families;

(G) biological parents;

(H) foster youth and former foster youth;

(I) relative or kinship caregivers;

(J) child welfare boards, if applicable;

(K) attorneys ad litem;

(L) attorneys that represent parents involved in suits filed by the department; and

(M) any other stakeholders, as determined by the contractor; and

(9) require that the contractor comply with any applicable court order issued by a court of competent jurisdiction in the case of a child for whom the contractor has assumed case management responsibilities or an order imposing a requirement on the department that relates to functions assumed by the contractor.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.156. Readiness Review Process for Community-Based Care Contractor

(a) The department shall develop a formal review process to assess the ability of a single source continuum contractor to satisfy the responsibilities and administrative requirements of delivering foster care services and services for relative and kinship caregivers, including the contractor's ability to provide:

(1) case management services for children and families;

(2) evidence-based, promising practice, or evidence-informed supports for children and families; and

(3) sufficient available capacity for inpatient and outpatient services and supports for children at all service levels who have previously been placed in the catchment area.

(b) As part of the readiness review process, the single source continuum contractor must prepare a plan detailing the methods by which the contractor will avoid or eliminate conflicts of interest. The department may not transfer services to the contractor until the department has determined the plan is adequate.

(c) The department and commission must develop the review process under Subsection (a) before the department may expand community-based care outside of the initial catchment areas where community-based care has been implemented.

(d) If after conducting the review process developed under Subsection (a) the department determines that a single source continuum contractor is able to adequately deliver foster care services and services for relative and kinship caregivers in advance of the projected dates stated in the timeline included in the contract with the contractor, the department may adjust the timeline to allow for an earlier transition of service delivery to the contractor.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.157. Expansion of Community-Based Care

(a) Not later than December 31, 2019, the department shall:

(1) identify not more than eight catchment areas in the state that are best suited to implement community-based care; and

(2) following the implementation of community-based care services in those catchment areas, evaluate the implementation process and single source continuum contractor performance in each catchment area.

(b) Notwithstanding the process for the expansion of community-based care described in Subsection (a), and in accordance with the community-based care implementation plan developed under Section 264.153, beginning September 1, 2017, the department shall begin accepting applications from entities to provide community-based care services in a designated catchment area.

(c) In expanding community-based care, the department may change the geographic boundaries of catchment areas as necessary to align with specific communities.

(d) The department shall ensure the continuity of services for children and families during the transition period to community-based care in a catchment area.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.158. TRANSFER OF CASE MANAGEMENT SERVICES TO SINGLE SOURCE CONTINUUM CONTRACTOR

(a) In each initial catchment area where community-based care has been implemented or a contract with a single source continuum contractor has been executed before September 1, 2017, the department shall transfer to the single source continuum contractor providing foster care services in that area:

(1) the case management of children, relative and kinship caregivers, and families receiving services from that contractor; and

(2) family reunification suppport services to be provided after a child receiving services from the contractor is returned to the child's family for the period of time ordered by the court.

(b) The commission shall include a provision in a contract with a single source continuum contractor to provide foster care services and services for relative and kinship caregivers in a catchment area to which community-based care is expanded after September 1, 2017, that requires the transfer to the contractor of the provision of:

(1) the case management services for children, relative and kinship caregivers, and families in the catchment area where the contractor will be operating; and

(2) family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family.

(c) The department shall collaborate with a single source continuum contractor to establish an initial case transfer planning team to:

(1) address any necessary data transfer;

(2) establish file transfer procedures; and

(3) notify relevant persons regarding the transfer of services to the contractor.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.159. DATA ACCESS AND STANDARDS GOVERNANCE COUNCIL

(a) The department shall create a data access and standards governance council to develop protocols for the electronic transfer of data from single source continuum contractors to the department to allow the contractors to perform case management functions.

(b) The council shall develop protocols for the access, management, and security of case data that is electronically shared by a single source continuum contractor with the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.160. LIABILITY INSURANCE REQUIREMENTS

A single source continuum contractor and any subcontractor of the single source continuum contractor providing community-based care services shall maintain minimum insurance coverage, as required in the contract with the department, to minimize the risk of insolvency and protect against damages. The executive commissioner may adopt rules to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.161. STATUTORY DUTIES ASSUMED BY CONTRACTOR

Except as provided by Section 264.163, a single source continuum contractor providing foster care services and services for relative and kinship caregivers in a catchment area must, either directly or through subcontractors, assume the statutory duties of the department in connection with the delivery of foster care services and services for relative and kinship caregivers in that catchment area.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.162. REVIEW OF CONTRACTOR PERFORMANCE

The department shall develop a formal review process to evaluate a single source continuum contractor's implementation of placement services and case management services in a catchment area.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.163. CONTINUING DUTIES OF DEPARTMENT

In a catchment area in which a single source continuum contractor is providing family-based safety services or community-based care services, legal representation of the department in an action under this code shall be provided in accordance with Section 264.009.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.164. CONFIDENTIALITY

(a) The records of a single source continuum contractor relating to the provision of community-based care services in a catchment area are subject to Chapter 552, Government Code, in the same manner as the records of the department are subject to that chapter.

(b) Subchapter C, Chapter 261, regarding the confidentiality of certain case information, applies to the records of a single source continuum contractor in relation to the provision of services by the contractor.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.165. NOTICE REQUIRED FOR EARLY TERMINATION OF CONTRACT

(a) A single source continuum contractor may terminate a contract entered into under this subchapter by providing notice to the department and the commission of the contractor's intent to terminate the contract not later than the 60th day before the date of the termination.

(b) The department may terminate a contract entered into with a single source continuum contractor under this subchapter by providing notice to the contractor of the department's intent to terminate the contract not later than the 30th day before the date of termination.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.166. CONTINGENCY PLAN IN EVENT OF EARLY CONTRACT TERMINATION

(a) In each catchment area in which community-based care is implemented, the department shall create a contingency plan to ensure the continuity of services for children and families in the catchment area in the event of an early termination of the contract with the single source continuum contractor providing foster care services in that catchment area.

(b) To support each contingency plan, the single source continuum contractor providing foster care services in that catchment area, subject to approval by the department, shall develop a transfer plan to ensure the continuity of services for children and families in the catchment area in the event of an early termination of the contract with the department. The contractor shall submit an updated transfer plan each year and six months before the end of the contract period, including any extension. The department is not limited or restricted in requiring additional information from the contractor or requiring the contractor to modify the transfer plan as necessary.

(c) If a single source continuum contractor gives notice to the department of an early contract termination, the department may enter into a contract with a different contractor for the sole purpose of assuming the contract that is being terminated.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.167. ATTORNEY-CLIENT PRIVILEGE

An employee, agent, or representative of a single source continuum contractor is considered to be a client's representative of the department for purposes of the privilege under Rule 503, Texas Rules of Evidence, as that privilege applies to communications with a prosecuting attorney or other attorney representing the department, or the attorney's representatives, in a proceeding under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.168. REVIEW OF CONTRACTOR RECOMMENDATIONS BY DEPARTMENT

(a) Notwithstanding any other provision of this subchapter governing the transfer of case management authority to a single source continuum contractor, the department may review, approve, or disapprove a contractor's recommendation with respect to a child's permanency goal.

(b) Subsection (a) may not be construed to limit or restrict the authority of the department to include necessary oversight measures and review processes to maintain compliance with federal and state requirements in a contract with a single source continuum contractor.

(c) The department shall develop an internal dispute resolution process to decide disagreements between a single source continuum contractor and the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.169. PILOT PROGRAM FOR FAMILY-BASED SAFETY SERVICES

(a) In this section, "case management services" means the direct delivery and coordination of a network of formal and informal activities and services in a catchment area where the department has entered into, or is in the process of entering into, a contract with a single source continuum contractor to provide family-based safety services and case management and includes:

(1) caseworker visits with the child and all caregivers;

(2) family visits;

(3) family group conferencing or family group decision-making;

(4) development of the family plan of service;

(5) monitoring, developing, securing, and coordinating services;

(6) evaluating the progress of children, caregivers, and families receiving services;

(7) assuring that the rights of children, caregivers, and families receiving services are protected;

(8) duties relating to family-based safety services ordered by a court, including:

(A) providing any required notifications or consultations;

(B) preparing court reports;

(C) attending judicial hearings, trials, and mediations;

(D) complying with applicable court orders; and

(E) ensuring the child is progressing toward the goal of permanency within state and federally mandated guidelines; and

(9) any other function or service that the department determines is necessary to allow a single source continuum contractor to assume responsibility for case management.

(b) The department shall develop and implement in two child protective services regions of the state a pilot program under which the commission contracts with a single nonprofit entity that has an organizational mission focused on child welfare or a governmental entity in each region to provide family-based safety services and case management for children and families receiving family-based safety services. The contract must include a transition plan for the provision of services that ensures the continuity of services for children and families in the selected regions.

(c) The contract with an entity must include performance-based provisions that require the entity to achieve the following outcomes for families receiving services from the entity:

(1) a decrease in recidivism;

(2) an increase in protective factors; and

(3) any other performance-based outcome specified by the department.

(d) The commission may only contract for implementation of the pilot program with entities that the department considers to have the capacity to provide, either directly or through subcontractors, an array of evidence-based, promising practice, or evidence-informed services and support programs to children and families in the selected child protective services regions.

(e) The contracted entity must perform all statutory duties of the department in connection with the delivery of the services specified in Subsection (b).

(f) The contracted entity must give preference for employment to employees of the department:

(1) whose position at the department is impacted by the implementation of community-based care; and

(2) who are considered by the department to be employees in good standing.

(g) Not later than December 31, 2018, the department shall report to the appropriate standing committees of the legislature having jurisdiction over child protective services and foster care matters on the progress of the pilot program. The report must include:

(1) an evaluation of each contracted entity's success in achieving the outcomes described by Subsection (c); and

(2) a recommendation as to whether the pilot program should be continued, expanded, or terminated.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 18(a), eff. Sept. 1, 2017.

Sec. 264.170. LIMITED LIABILITY FOR SINGLE SOURCE CONTINUUM CONTRACTOR AND RELATED PERSONNEL

(a) A nonprofit entity that contracts with the department to provide services as a single source continuum contractor under this subchapter is considered to be a charitable organization for the purposes of Chapter 84, Civil Practice and Remedies Code, with respect to the provision of those services, and that chapter applies to the entity and any person who is an employee or volunteer of the entity.

(b) The limitations on liability provided by this section apply:

(1) only to an act or omission by the entity or person, as applicable, that occurs while the entity or person is acting within the course and scope of the entity's contract with the department and the person's duties for the entity; and

(2) only if insurance coverage in the minimum amounts required by Chapter 84, Civil Practice and Remedies Code, is in force and effect at the time a cause of action for personal injury, death, or property damage accrues.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (H.B. 5), Sec. 13, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 4170, Sec. 7.006, eff. Sept. 1, 2019.

SUBCHAPTER C. CHILD AND FAMILY SERVICES

Sec. 264.201. SERVICES BY DEPARTMENT

(a) When the department provides services directly or by contract to an abused or neglected child and the child's family, the services shall be designed to:

(1) prevent further abuse;

(2) alleviate the effects of the abuse suffered;

(3) prevent removal of the child from the home; and

(4) provide reunification services when appropriate for the return of the child to the home.

(b) The department shall emphasize ameliorative services for sexually abused children.

(c) The department shall provide or contract for necessary services to an abused or neglected child and the child's family without regard to whether the child remains in or is removed from the family home. If parental rights have been terminated, services may be provided only to the child.

(d) The services may include in-home programs, parenting skills training, youth coping skills, and individual and family counseling. If the department requires or a court orders parenting skills training services through a parenting education program, the program must be an evidence-based or promising practice parenting education program described by Section 265.151 that is provided in the community in which the family resides, if available.

(e) The department may not provide and a court may not order the department to provide supervision for visitation in a child custody matter unless the department is a petitioner or intervener in the underlying suit.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 28, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 49, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 1, eff. September 1, 2015; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(6), eff. September 1, 2017.

Sec. 264.2011. ENHANCED IN-HOME SUPPORT PROGRAM

(a) To the extent that funding is available, the department shall develop a program to strengthen families through enhanced in-home support. The program shall assist certain low-income families and children in child neglect cases in which poverty is believed to be a significant underlying cause of the neglect and in which the enhancement of in-home support appears likely to prevent removal of the child from the home or to speed reunification of the child with the family.

(b) A family that meets eligibility criteria for inclusion in the program is eligible to receive limited funding from a flexible fund account to cover nonrecurring expenses that are designed to help the family accomplish the objectives included in the family's service plan.

(c) The executive commissioner shall adopt rules establishing:

(1) specific eligibility criteria for the program described in this section;

(2) the maximum amount of money that may be made available to a family through the flexible fund account; and

(3) the purposes for which money made available under the program may be spent.

(d) The department shall evaluate the results of the program to determine whether the program is successful in safely keeping families together. If the department determines that the program is successful, the department shall continue the program to the extent that funding is available.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 19, eff. September 1, 2007.

Sec. 264.2015. FAMILY GROUP CONFERENCING

The department may collaborate with the courts and other appropriate local entities to develop and implement family group conferencing as a strategy for promoting family preservation and permanency for children.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.52, eff. September 1, 2005.

Sec. 264.202. STANDARDS AND EFFECTIVENESS

(a) The department, with assistance from national organizations with expertise in child protective services, shall define a minimal baseline of in-home and foster care services for abused or neglected children that meets the professionally recognized standards for those services. The department shall attempt to provide services at a standard not lower than the minimal baseline standard.

(b) The department, with assistance from national organizations with expertise in child protective services, shall develop outcome measures to track and monitor the effectiveness of in-home and foster care services.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 264.203. REQUIRED PARTICIPATION

(a) Except as provided by Subsection (d), the court on request of the department may order the parent, managing conservator, guardian, or other member of the subject child's household to:

(1) participate in the services the department provides or purchases for:

(A) alleviating the effects of the abuse or neglect that has occurred; or

(B) reducing the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future; and

(2) permit the child and any siblings of the child to receive the services.

(b) The department may 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) If the person ordered to participate in the services fails to follow the court's order, the court may 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) If the court does not order the person to participate, the court in writing shall specify the reasons for not ordering participation.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.55, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 20, eff. September 1, 2007.

ANNOTATIONS

In re A.S., No: 07-19-00093-CV, 2019 WL 1389365 (Tex. App.—Amarillo Mar. 27, 2019, no pet.) (mem. op.). An order for parents to participate in services pursuant to this section is not a final order that is subject to interlocutory appeal.

Sec. 264.204. COMMUNITY-BASED FAMILY SERVICES

(a) The department shall administer a grant program to provide funding to community organizations, including faith-based or county organizations, to respond to:

(1) low-priority, less serious cases of abuse and neglect; and

(2) cases in which an allegation of abuse or neglect of a child was unsubstantiated but involved a family that has been previously investigated for abuse or neglect of a child.

(b) The executive commissioner shall adopt rules to implement the grant program, including rules governing the submission and approval of grant requests and the cancellation of grants.

(c) To receive a grant, a community organization whose grant request is approved must execute an interagency agreement or a contract with the department. The contract must require the organization receiving the grant to perform the services as stated in the approved grant request. The contract must contain appropriate provisions for program and fiscal monitoring.

(d) In areas of the state in which community organizations receive grants under the program, the department shall refer low-priority, less serious cases of abuse and neglect to a community organization receiving a grant under the program.

(e) A community organization receiving a referral under Subsection (d) shall make a home visit and offer family social services to enhance the parents' ability to provide a safe and stable home environment for the child. If the family chooses to use the family services, a case manager from the organization shall monitor the case and ensure that the services are delivered.

(f) If after the home visit the community organization determines that the case is more serious than the department indicated, the community organization shall refer the case to the department for a full investigation.

(g) The department may not award a grant to a community organization in an area of the state in which a similar program is already providing effective family services in the community.

(h) For purposes of this section, a case is considered to be a less serious case of abuse or neglect if:

(1) the circumstances of the case do not appear to involve a reasonable likelihood that the child will be abused or neglected in the foreseeable future; or

(2) the allegations in the report of child abuse or neglect:

(A) are general in nature or vague and do not support a determination that the child who is the subject of the report has been abused or neglected or will likely be abused or neglected; or

(B) if substantiated, would not be considered abuse or neglect under this chapter.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.53, eff. September 1, 2005.

Sec. 264.2041. CULTURAL AWARENESS

The department shall:

(1) develop and deliver cultural competency training to all service delivery staff;

(2) increase targeted recruitment efforts for foster and adoptive families who can meet the needs of children and youth who are waiting for permanent homes;

(3) target recruitment efforts to ensure diversity among department staff; and

(4) develop collaborative partnerships with community groups, agencies, faith-based organizations, and other community organizations to provide culturally competent services to children and families of every race and ethnicity.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.54, eff. September 1, 2005.

Sec. 264.2042. NONPROFIT ORGANIZATIONS PROVIDING CHILD AND FAMILY SERVICES

(a) The department shall cooperate with nonprofit organizations, including faith-based organizations, in providing information to families in crisis regarding child and family services, including respite care, voluntary guardianship, and other support services, available in the child's community.

(b) The department does not incur any obligation as a result of providing information as required by Subsection (a).

(c) The department is not liable for damages arising out of the provision of information as required by Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 11, eff. Sept. 1, 2017.

Sec. 264.2043. PROHIBITION ON ABUSE OR NEGLECT INVESTIGATION BASED SOLELY ON REQUEST FOR INFORMATION

The department may not initiate an investigation of child abuse or neglect based solely on a request submitted to the department by a child's parent for information relating to child and family services available to families in crisis.

Added by Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 11, eff. Sept. 1, 2017.

Sec. 264.2044. GRANTS FOR FAITH-BASED COMMUNITY COLLABORATIVE PROGRAMS

(a) Using available funds or private donations, the governor shall establish and administer an innovation grant program to award grants to support faith-based community programs that collaborate with the department and the commission to improve foster care and the placement of children in foster care.

(b) A faith-based community program is eligible for a grant under this section if:

(1) the effectiveness of the program is supported by empirical evidence; and

(2) the program has demonstrated the ability to build connections between faith-based, secular, and government stakeholders.

(c) The regional director for the department in the region where a grant recipient program is located, or the regional director's designee, shall serve as the liaison between the department and the

program for collaborative purposes. For a program that operates in a larger region, the department may designate a liaison in each county where the program is operating. The department or the commission may not direct or manage the operation of the program.

(d) The initial duration of a grant under this section is two years. The governor may renew a grant awarded to a program under this section if funds are available and the governor determines that the program is successful.

(e) The governor may not award to a program grants under this section totaling more than $300,000.

(f) The governor shall adopt rules to implement the grant program created under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 19(a), eff. Sept. 1, 2017. Redesignated from Sec. 264.2042 by Acts 2019, 86th Leg., H.B. 4170, Sec. 21.001(18), eff. Sept. 1, 2019.

Sec. 264.205. SWIFT ADOPTION TEAMS

(a) The department shall develop swift adoption teams to expedite the process of placing a child under the jurisdiction of the department for adoption. Swift adoption teams developed under this section shall, in performing their duties, attempt to place a child for adoption with an appropriate relative of the child.

(b) A swift adoption team shall consist of department personnel who shall operate under policies adopted by rule by the executive commissioner. The department shall set priorities for the allocation of department resources to enable a swift adoption team to operate successfully under the policies adopted under this subsection.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(27), eff. June 17, 2011.

Added by Acts 1995, 74th Leg., ch. 943, Sec. 9, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 306, Sec. 4, eff. Sept. 1, 2001. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 20, eff. September 1, 2011. Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(27), eff. June 17, 2011. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.196, eff. April 2, 2015.

Sec. 264.207. HOME STUDY REQUIRED BEFORE ADOPTION

(a) The department must complete a home study before the date an applicant is approved for an adoption.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(32), eff. September 1, 2015.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 94, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 58, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 59, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(32), eff. September 1, 2015.

SUBCHAPTER D. SERVICES TO AT-RISK YOUTH

Sec. 264.301. SERVICES FOR AT-RISK YOUTH

(a) The department shall operate a program to provide services for children in at-risk situations and for the families of those children.

(b) The services under this section may include:

(1) crisis family intervention;

(2) emergency short-term residential care;

(3) family counseling;

(4) parenting skills training;

(5) youth coping skills training;

(6) mentoring; and

(7) advocacy training.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 58, eff. Jan. 1, 1996.

Sec. 264.302. EARLY YOUTH INTERVENTION SERVICES

(a) This section applies to a child who:

(1) is seven years of age or older and under 17 years of age; and

(2) has not had the disabilities of minority for general purposes removed under Chapter 31.

(b) The department shall operate a program under this section to provide services for children in at-risk situations and for the families of those children.

(c) The department may not provide services under this section to a child who has:

(1) at any time been referred to juvenile court for engaging in conduct that violates a penal law of this state of the grade of felony other than a state jail felony; or

(2) been found to have engaged in delinquent conduct under Title 3.

(d) The department may provide services under this section to a child who engages in conduct for which the child may be found by a court to be an at-risk child, without regard to whether the conduct violates a penal law of this state of the grade of felony other than a state jail felony, if the child was younger than 10 years of age at the time the child engaged in the conduct.

(e) The department shall provide services for a child and the child's family if a contract to provide services under this section is available in the county and the child is referred to the department as an at-risk child by:

(1) a juvenile court or probation department as part of a progressive sanctions program under Chapter 59;

(2) a law enforcement officer or agency under Section 52.03; or

(3) a justice or municipal court under Article 45.057, Code of Criminal Procedure.

(f) The services under this section may include:

(1) crisis family intervention;

(2) emergency short-term residential care for children 10 years of age or older;

(3) family counseling;

(4) parenting skills training;

(5) youth coping skills training;

(6) advocacy training; and

(7) mentoring.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 58, eff. Jan. 1, 1996. Amended by Acts 1997, 75th Leg., ch. 1086, Sec. 30, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 575, Sec. 31, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1514, Sec. 16, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 60, eff. September 1, 2015.

SUBCHAPTER E. CHILDREN'S ADVOCACY CENTERS

Sec. 264.401. DEFINITION

In this subchapter, "center" means a children's advocacy center.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 1, eff. Sept. 1, 1995.

Sec. 264.402. ESTABLISHMENT OF CHILDREN'S ADVOCACY CENTER

On the execution of a memorandum of understanding under Section 264.403, a children's advocacy center may be established by community members and the participating **agencies** ~~entities~~ described by Section 264.403(a) to serve a county or two or more contiguous counties **in which a center has not been established**.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 185, Sec. 1, eff. Sept. 1, 2003. Acts 2019, 86th Leg., S.B. 821, Sec. 1, eff. Sept. 1, 2019.

Sec. 264.403. INTERAGENCY MEMORANDUM OF UNDERSTANDING

(a) ~~A Before a~~ center **shall enter into** ~~may be established under Section 264.402,~~ a memorandum of understanding regarding participation in **the multidisciplinary team response under Section 264.406. The center and each of the following agencies** ~~operation of the center~~ must **execute the memorandum of understanding** ~~be executed among~~:

(1) ~~the division of~~ the department responsible for child abuse **and neglect** investigations;

(2) **each** ~~representatives of~~ county and municipal law enforcement **agency with jurisdiction to** ~~agencies that~~ investigate child abuse **and neglect** in the area to be served by the center; **and**

(3) **each** ~~the~~ county or district attorney **with jurisdiction to prosecute** ~~who routinely prosecutes~~ child abuse **and neglect** cases in the area to be served by the center~~; and~~

~~(4) a representative of any other governmental entity that participates in child abuse investigations or offers services to child abuse victims that desires to participate in the operation of the center~~.

(b) A memorandum of understanding executed under this section shall include the agreement of each participating **agency** ~~entity~~ to cooperate in:

(1) **minimizing the revictimization of alleged abuse and neglect victims and nonoffending family members through the investigation, assessment, intervention, and prosecution processes; and**

(2) **maintaining** ~~developing~~ a cooperative~~,~~ team approach to **facilitate successful outcomes in the criminal justice and** ~~investigating~~ child **protection systems through shared fact-finding and strong, collaborative case development** ~~abuse,~~

~~(2) reducing, to the greatest extent possible, the number of interviews required of a victim of child abuse to minimize the negative impact of the investigation on the child; and~~

~~(3) developing, maintaining, and supporting, through the center, an environment that emphasizes the best interests of children and that provides investigatory and rehabilitative services~~.

(c) **The** ~~A~~ memorandum of understanding **must be reexecuted:**

(1) **at least every three years;**

(2) **on a significant change to the memorandum of understanding;** ~~executed under this section may include the agreement of one~~ or

(3) **on a change of a signatory of a** ~~more~~ participating **agency** ~~entities to provide office space and administrative services necessary for the center's operation~~.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2019, 86th Leg., S.B. 821, Sec. 2, eff. Sept. 1, 2019.

Sec. 264.4031. MULTIDISCIPLINARY TEAM WORKING PROTOCOL

(a) A center shall adopt a multidisciplinary team working protocol. The working protocol must include:

(1) **the center's mission statement;**

(2) **the role of each participating agency on the multidisciplinary team and the agency's commitment to the center;**

(3) **specific criteria for referral of cases for a multidisciplinary team response and specific criteria for the referral and provision of each service provided by the center;**

(4) **processes and general procedures for:**

(A) **the intake of cases, including direct referrals from participating agencies described by Section 264.403(a) and reports from the department that involve the suspected abuse or neglect of a child or the death of a child from abuse or neglect;**

(B) **the availability outside scheduled business hours of a multidisciplinary team response to cases and provision of necessary center services;**

(C) **information sharing to ensure the timely exchange of relevant information;**

(D) forensic interviews;

(E) family and victim advocacy;

(F) medical evaluations and medical treatment;

(G) mental health evaluations and mental health treatment;

(H) multidisciplinary team case review; and

(I) case tracking; and

(5) provisions for addressing conflicts within the multidisciplinary team and for maintaining the confidentiality of information shared among members of the multidisciplinary team.

(b) The working protocol must be executed by the participating agencies required to enter into the memorandum of understanding under Section 264.403.

(c) The working protocol must be reexecuted:

(1) at least every three years;

(2) on a significant change to the working protocol; or

(3) on a change of a signatory of a participating agency.

Added by Acts 2019, 86th Leg., S.B. 821, Sec. 3, eff. Sept. 1, 2019.

Sec. 264.404. BOARD REPRESENTATION

(a) In addition to any other persons appointed or elected to serve on the governing board of a ~~children's advocacy~~ center, the governing board must include an executive officer of, or an employee **with decision-making authority** selected by an executive officer of:

(1) **the department responsible for child abuse and neglect investigations;**

(2) a law enforcement agency **with jurisdiction to investigate** ~~that investigates~~ child abuse **and neglect** in the area served by the center;

~~(2) the child protective services division of the department;~~ and

(3) the county or district attorney's office **with jurisdiction to prosecute** ~~involved in the prosecution of~~ child abuse **and neglect** cases in the area served by the center.

(b) Service on a center's board by an executive officer or employee under Subsection (a) is an additional duty of the person's office or employment.

(c) The governing board members required under Subsection (a) may not constitute a majority of the membership of a center's governing board.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 185, Sec. 1, eff. Sept. 1, 2003. Acts 2019, 86th Leg., S.B. 821, Sec. 4, eff. Sept. 1, 2019.

Sec. 264.405. CENTER DUTIES

(a) A center shall:

(1) **receive, review, and track department reports relating to the suspected abuse or neglect of a child or the death of a child from abuse or neglect to ensure a consistent,**

comprehensive approach to all cases that meet the criteria outlined in the multidisciplinary team working protocol adopted under Section 264.4031;

(2) coordinate the activities of participating agencies relating to abuse and neglect investigations and delivery of services to alleged abuse and neglect victims and their families;

(3) facilitate assessment of alleged abuse or neglect ~~assess~~ victims ~~of child abuse~~ and their families to determine their need for services relating to the investigation of ~~child~~ abuse **or neglect and**~~,~~

~~(2)~~ provide **needed** services ~~determined to be needed under Subdivision (1)~~; **and**

(4) comply with the standards adopted under Section 264.409(c).

(b) **A center shall** ~~(3)~~ provide:

(1) facilitation of a multidisciplinary team response to abuse or neglect allegations;

(2) a formal process that requires the multidisciplinary team to routinely discuss and share information regarding investigations, case status, and services needed by children and families;

(3) a system to monitor the progress and track the outcome of each case;

(4) a child-focused setting that is comfortable, private, and physically and psychologically safe for diverse populations ~~a facility~~ at which a multidisciplinary team ~~appointed under Section 264.406~~ can meet to facilitate the efficient and appropriate disposition of ~~child~~ abuse **and neglect** cases through the civil and criminal justice systems;

(5) culturally competent services for children and families throughout the duration of a case;

(6) victim support and advocacy services for children and families;

(7) forensic interviews that are conducted in a neutral, fact-finding manner and coordinated to avoid duplicative interviewing;

(8) access to specialized medical evaluations and treatment services for victims of alleged abuse or neglect;

(9) evidence-based, trauma-focused mental health services for children and nonoffending members of the child's family; and

(10) opportunities for community involvement through a formalized volunteer program dedicated to supporting the center ~~(4) coordinate the activities of governmental entities relating to child abuse investigations and delivery of services to child abuse victims and their families~~.

(c) The duties prescribed to a center under Subsection (a)(1) do not relieve the department or a law enforcement agency of its duty to investigate a report of abuse or neglect as required by other law.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2019, 86th Leg., S.B. 821, Sec. 5, eff. Sept. 1, 2019.

Sec. 264.406. MULTIDISCIPLINARY TEAM

(a) A center's multidisciplinary team must include employees of the participating agencies **described by Section 264.403(a)** ~~who are professionals involved in the investigation or prosecution of child abuse cases~~.

(b) A representative of any other entity may participate in the multidisciplinary team response as provided by the multidisciplinary team working protocol adopted under Section 264.4031 if:

(1) the entity participates in or provides the following:

(A) child abuse or neglect investigations;

(B) abuse or neglect investigations involving persons with a disability;

(C) services to alleged child abuse or neglect victims; or

(D) services to alleged victims who are persons with a disability;

(2) the center and the participating agencies agree in writing to the entity's participation; and

(3) the entity signs the memorandum of understanding executed under Section 264.403 and the working protocol adopted under Section 264.4031.

(c) ~~(b)~~ A ~~center's~~ multidisciplinary team **shall be actively** ~~may also include professionals~~ involved in **the following** ~~the delivery of services, including medical and mental health services, to child abuse victims and the victims' families.~~

~~(c)~~ ~~A~~ multidisciplinary team **response** ~~shall meet at regularly scheduled intervals to~~:

(1) **coordinating** ~~review child abuse cases determined to be appropriate for review by the multidisciplinary team; and~~

~~(2)~~ ~~coordinate~~ the actions of the **participating agencies** ~~entities~~ involved in the investigation and prosecution of ~~the~~ cases and the delivery of services to **alleged** ~~the child~~ abuse **or neglect** victims and the victims' families; **and**

(2) conducting at regularly scheduled intervals multidisciplinary review of appropriate abuse or neglect cases as provided by the working protocol adopted under Section 264.4031.

(d) A multidisciplinary team may review **an** ~~a child~~ abuse **or neglect** case in which the alleged perpetrator ~~does not have custodial control or supervision of the child or~~ is not **a person** responsible for **a** ~~the~~ child's **care, custody, or** welfare ~~or care~~.

(e) ~~A When acting in the member's official capacity, a~~ multidisciplinary team member is authorized to **share with and** receive **from other multidisciplinary team members** information made confidential by **Chapter 552, Government Code,** Section 40.005 **or 48.101**, Human Resources Code, or Section 261.201 or 264.408 **of this code when acting in the member's official capacity as an employee of a participating agency described by Section 264.403(a) or of another entity described by Subsection (b)**.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 32, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 185, Sec. 1, eff. Sept. 1, 2003. Acts 2019, 86th Leg., S.B. 821, Sec. 6, eff. Sept. 1, 2019.

Sec. 264.4061. MULTIDISCIPLINARY TEAM RESPONSE REQUIRED

(a) The department shall refer a case to a center and the center shall initiate a response by a center's multidisciplinary team appointed under Section 264.406 when conducting an investigation of:

(1) a report of abuse **or neglect** that is made by a professional as defined by Section 261.101 and that:

(A) alleges sexual abuse of a child; or

(B) is a type of case handled by the center in accordance with the working protocol adopted for the center under Section **264.4031** ~~264.411(a)(9)~~; or

(2) a child fatality in which there are surviving children in the deceased child's household or under the supervision of the caregiver involved in the child fatality.

(b) Any interview of a child conducted as part of the investigation under Subsection (a) must be a forensic interview conducted in accordance with the center's working protocol **adopted under Section 264.4031** unless a forensic interview is not appropriate based on the child's age and development or the center's working protocol **adopted under Section 264.4031**.

(c) Subsection (a) applies only to an investigation of abuse **or neglect** in a county served by a center that has executed an interagency memorandum of understanding under Section 264.403. If a county is not served by a center that has executed an interagency memorandum of understanding, the department may**, if appropriate,** directly refer a case to a center in an adjacent county to initiate a response by that center's multidisciplinary team~~, if appropriate~~.

Added by Acts 2017, 85th Leg., R.S., Ch. 945 (S.B. 1806), Sec. 1, eff. Sept. 1, 2017. Amended by Acts 2019, 86th Leg., S.B. 821, Sec. 7, eff. Sept. 1, 2019.

Sec. 264.407. LIABILITY

(a) A person is not liable for civil damages for a recommendation made or an opinion rendered in good faith while acting in the official scope of the person's duties as a member of a multidisciplinary team or as a board member, staff member, or volunteer of a center.

(b) The limitation on civil liability of Subsection (a) does not apply if a person's actions constitute gross negligence.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 1, eff. Sept. 1, 1995.

Sec. 264.408. USE OF INFORMATION AND RECORDS; CONFIDENTIALITY AND OWNERSHIP

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter. Disclosure may be **made** to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state or local agencies that provide services to children and families; and

(2) the attorney for the **alleged victim** ~~child~~ who is the subject of the records and a court-appointed volunteer advocate appointed for the **alleged victim** ~~child~~ under Section 107.031.

(b) Information related to the investigation of a report of abuse or neglect under Chapter 261 and **to the** services provided as a result of the investigation is confidential as provided by Section 261.201.

(c) The department, a law enforcement agency, and a prosecuting attorney may share with a center information that is confidential under Section 261.201 as needed to provide services under this chapter. Confidential information shared with or provided to a center remains the property of the agency that shared or provided the information to the center. A **request for confidential information provided to the center under this section must be made to the agency that shared or provided the information.**

(d) **An electronic** ~~A video~~ recording of an interview **with** ~~of~~ a child **or person with a disability** that is made by a center is the property of the prosecuting attorney involved in the criminal prosecution of the case involving the child **or person**. If no criminal prosecution occurs, the **electronic** ~~video~~ recording is the property of the attorney involved in representing the department in a civil action alleging ~~child~~ abuse, ~~or~~ neglect**, or exploitation**. If the matter involving the child **or person** is not prosecuted, the **electronic** ~~video~~ recording is the property of the department if the matter is an investigation by the department of abuse, ~~or~~ neglect**, or exploitation**. If the department is not investigating or has not investigated the matter, the **electronic** ~~video~~ recording is the property of the agency that referred the matter to the center.

(d–1) **An electronic** ~~A video~~ recording of an interview described by Subsection (d) is subject to production under Article 39.14, Code of Criminal Procedure, and Rule 615, Texas Rules of Evidence. A court shall deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce **an electronic** ~~a video~~ recording of an interview described by Subsection (d), provided that the prosecuting attorney makes the **electronic** ~~video~~ recording reasonably available to the defendant in the same manner as property or material may be made available to defendants, attorneys, and expert witnesses under Article 39.15(d), Code of Criminal Procedure.

(e) The department shall be allowed access to **electronic** ~~a center's video~~ recordings of interviews of children **or persons with a disability**.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 33, eff. Sept. 1, 1997. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 653 (S.B. 1106), Sec. 4, eff. June 17, 2011. Acts 2013, 83rd Leg., R.S., Ch. 1069 (H.B. 3259), Sec. 3, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 299 (S.B. 60), Sec. 1, eff. September 1, 2015. Acts 2019, 86th Leg., S.B. 821, Sec. 8, eff. Sept. 1, 2019.

ANNOTATIONS

In re Fulgium, 150 S.W.3d 252 (Tex. App.—Texarkana 2004, orig. proceeding). A trial court has discretion to order disclosure of the information listed in this section provided that the disclosure is essential to the administration of justice and would not endanger the child, the person reporting the abuse, or any other person.

Sec. 264.409. ADMINISTRATIVE CONTRACTS

(a) The ~~department or the~~ commission shall contract with **one** ~~a~~ statewide organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code ~~and designated as a supporting organization under Section 509(a)(3) of that code~~ and that is composed of individuals ~~or groups of individuals~~ who have expertise in the establishment and operation of children's advocacy center programs. The statewide organization shall provide training, technical assistance, evaluation services, and funds administration to support contractual requirements under Section 264.411 for local children's advocacy center programs.

(b) The ~~If the commission enters into a~~ contract under this section~~, the contract~~ must provide that the statewide organization may not spend annually in the performance of duties under Subsection (a) more than 12 percent of the annual amount appropriated to the commission for purposes of this section.

(c) The statewide organization with which the commission contracts shall develop and adopt standards for children's advocacy centers.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 33, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 347, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 1, eff. September 1, 2015. Acts 2019, 86th Leg., S.B. 821, Sec. 9, eff. Sept. 1, 2019.

Sec. 264.410. CONTRACTS WITH CHILDREN'S ADVOCACY CENTERS

(a) The statewide organization with which ~~the department or~~ the commission contracts under Section 264.409 shall contract ~~for services~~ with eligible centers to **establish, maintain, and** enhance the ~~existing~~ services **provided by the centers** ~~of the programs~~.

(b) The contract under this section may not result in reducing the financial support a ~~local~~ center receives from another source.

~~(c) If the commission enters into a contract with a statewide organization under Section 264.409, the executive commissioner by rule shall adopt standards for eligible local centers. The statewide organization shall assist the executive commissioner in developing the standards.~~

Added by Acts 1997, 75th Leg., ch. 575, Sec. 33, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 347, Sec. 2, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 2, eff. September 1, 2015. Acts 2019, 86th Leg., S.B. 821, Secs. 10, 12, eff. Sept. 1, 2019.

Sec. 264.411. ELIGIBILITY FOR CONTRACTS

(a) A public entity that operated as a center under this subchapter before November 1, 1995, or a nonprofit entity is eligible for a contract under Section 264.410 if the entity:

(1) has a signed memorandum of understanding as provided by Section 264.403;

(2) **has a signed working protocol as provided by Section 264.4031;**

(3) has ~~operates under the authority of~~ a governing board as provided by Section 264.404;

(4) ~~(3)~~ has a multidisciplinary team ~~of persons involved in the investigation or prosecution of child abuse cases or the delivery of services~~ as provided by Section 264.406;

(5) ~~(4)~~ ~~holds~~ regularly **convenes the multidisciplinary team** ~~scheduled case reviews~~ as provided by Section 264.406;

~~(5) operates in a neutral and physically separate space from the day-to-day operations of any public agency partner;~~

(6) ~~has developed a method of statistical information gathering on children receiving services through the center and shares such statistical information with the statewide organization, the department, and the commission when requested;~~

~~(7) has an in-house volunteer program;~~

~~(8)~~ employs an executive director who is **accountable** ~~answerable~~ to the board of directors of the entity and who is not the exclusive salaried employee of any **governmental** ~~public~~ agency ~~partner~~;

~~(9) operates under a working protocol that includes a statement of:~~

~~(A) the center's mission;~~

~~(B) each agency's role and commitment to the center;~~

~~(C) the type of cases to be handled by the center;~~

~~(D) the center's procedures for conducting case reviews and forensic interviews and for ensuring access to specialized medical and mental health services; and~~

~~(E) the center's policies regarding confidentiality and conflict resolution;~~ and

(7) fulfills the duties required by Section 264.405 ~~(10) implements at the center the following program components:~~

~~(A) a case tracking system that monitors statistical information on each child and nonoffending family member or other caregiver who receives services through the center and that includes progress and disposition information for each service the multidisciplinary team determines should be provided to the client;~~

~~(B) a child-focused setting that is comfortable, private, and physically and psychologically safe for diverse populations of children and nonoffending family members and other caregivers;~~

~~(C) family advocacy and victim support services that include comprehensive case management and victim support services available to each child and the child's nonoffending family members or other caregivers as part of the services the multidisciplinary team determines should be provided to a client;~~

~~(D) forensic interviews conducted in a neutral, fact-finding manner and coordinated to avoid duplicative interviewing;~~

~~(E) specialized medical evaluation and treatment services that are available to all children who receive services through the center and coordinated with the services the multidisciplinary team determines should be provided to a child;~~

~~(F) specialized trauma-focused mental health services that are designed to meet the unique needs of child abuse victims and the victims' nonoffending family members or other caregivers and that are available as part of the services the multidisciplinary team determines should be provided to a client; and~~

~~(G) a system to ensure that all services available to center clients are culturally competent and diverse and are coordinated with the services the multidisciplinary team determines should be provided to a client~~.

(b) The statewide organization **described by Section 264.409** may waive the requirements specified in Subsection (a) if it determines that the waiver will not adversely affect **a** ~~the~~ center's ability to carry out its duties under Section 264.405.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 33, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 347, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 185, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 136 (S.B. 245), Sec. 1, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 3, eff. September 1, 2015. Acts 2019, 86th Leg., S.B. 821, Sec. 11, eff. Sept. 1, 2019.

SUBCHAPTER F. CHILD FATALITY REVIEW AND INVESTIGATION

Sec. 264.501. DEFINITIONS

In this subchapter:

(1) "Autopsy" and "inquest" have the meanings assigned by Article 49.01, Code of Criminal Procedure.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 1.203(13), eff. April 2, 2015.

(3) "Child" means a person younger than 18 years of age.

(4) "Committee" means the child fatality review team committee.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 1.203(13), eff. April 2, 2015.

(6) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including dental and mental health evaluation or treatment.

(7) "Meeting" means an in-person meeting or a meeting held by telephone or other electronic medium.

(8) "Preventable death" means a death that may have been prevented by reasonable medical, social, legal, psychological, or educational intervention. The term includes the death of a child from:

(A) intentional or unintentional injuries;

(B) medical neglect;

(C) lack of access to medical care;

(D) neglect and reckless conduct, including failure to supervise and failure to seek medical care; and

(E) premature birth associated with any factor described by Paragraphs (A) through (D).

(9) "Review" means a reexamination of information regarding a deceased child from relevant agencies, professionals, and health care providers.

(10) "Review team" means a child fatality review team established under this subchapter.

(11) "Unexpected death" includes a death of a child that, before investigation:

(A) appears to have occurred without anticipation or forewarning; and

(B) was caused by trauma, suspicious or obscure circumstances, sudden infant death syndrome, abuse or neglect, or an unknown cause.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 957, Sec. 2, eff. Sept. 1, 2001. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.203(13), eff. April 2, 2015.

Sec. 264.502. COMMITTEE

(a) The child fatality review team committee is composed of:

(1) a person appointed by and representing the state registrar of vital statistics;

(2) a person appointed by and representing the commissioner of the department;

(3) a person appointed by and representing the Title V director of the Department of State Health Services;

(4) a person appointed by and representing the speaker of the house of representatives;

(5) a person appointed by and representing the lieutenant governor;

(6) a person appointed by and representing the governor; and

(7) individuals selected under Subsection (b).

(b) The members of the committee who serve under Subsections (a)(1) through (6) shall select the following additional committee members:

(1) a criminal prosecutor involved in prosecuting crimes against children;

(2) a sheriff;

(3) a justice of the peace;

(4) a medical examiner;

(5) a police chief;

(6) a pediatrician experienced in diagnosing and treating child abuse and neglect;

(7) a child educator;

(8) a child mental health provider;

(9) a public health professional;

(10) a child protective services specialist;

(11) a sudden infant death syndrome family service provider;

(12) a neonatologist;

(13) a child advocate;

(14) a chief juvenile probation officer;

(15) a child abuse prevention specialist;

(16) a representative of the Department of Public Safety;

(17) a representative of the Texas Department of Transportation;

(18) an emergency medical services provider; and

(19) a provider of services to, or an advocate for, victims of family violence.

(c) Members of the committee selected under Subsection (b) serve three-year terms with the terms of six or seven members, as appropriate, expiring February 1 each year.

(d) Members selected under Subsection (b) must reflect the geographical, cultural, racial, and ethnic diversity of the state.

(e) An appointment to a vacancy on the committee shall be made in the same manner as the original appointment. A member is eligible for reappointment.

(f) Members of the committee shall select a presiding officer from the members of the committee.

(g) The presiding officer of the committee shall call the meetings of the committee, which shall be held at least quarterly.

(h) A member of the committee is not entitled to compensation for serving on the committee but is entitled to reimbursement for the member's travel expenses as provided in the General Appropriations Act. Reimbursement under this subsection for a person serving on the committee under Subsection (a)(2) shall be paid from funds appropriated to the department. Reimbursement for other persons serving on the committee shall be paid from funds appropriated to the Department of State Health Services.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 957, Sec. 3, eff. Sept. 1, 2001. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.56, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 396 (S.B. 802), Sec. 1, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3C.04, eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 42, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 1145 (S.B. 66), Sec. 1, eff. September 1, 2013. Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 5, eff. Sept. 1, 2017.

Sec. 264.503. PURPOSE AND DUTIES OF COMMITTEE AND SPECIFIED STATE AGENCIES

(a) The purpose of the committee is to:

(1) develop an understanding of the causes and incidence of child deaths in this state;

(2) identify procedures within the agencies represented on the committee to reduce the number of preventable child deaths; and

(3) promote public awareness and make recommendations to the governor and the legislature for changes in law, policy, and practice to reduce the number of preventable child deaths.

(b) To ensure that the committee achieves its purpose, the department and the Department of State Health Services shall perform the duties specified by this section.

(c) The department shall work cooperatively with:

(1) the Department of State Health Services;

(2) the committee; and

(3) individual child fatality review teams.

(d) The Department of State Health Services shall:

(1) recognize the creation and participation of review teams;

(2) promote and coordinate training to assist the review teams in carrying out their duties;

(3) assist the committee in developing model protocols for:

(A) the reporting and investigating of child fatalities for law enforcement agencies, child protective services, justices of the peace and medical examiners, and other professionals involved in the investigations of child deaths;

(B) the collection of data regarding child deaths; and

(C) the operation of the review teams;

(4) develop and implement procedures necessary for the operation of the committee;

(5) develop and make available training for justices of the peace and medical examiners regarding inquests in child death cases; and

(6) promote education of the public regarding the incidence and causes of child deaths, the public role in preventing child deaths, and specific steps the public can undertake to prevent child deaths.

(d–1) The committee shall enlist the support and assistance of civic, philanthropic, and public service organizations in the performance of the duties imposed under Subsection (d).

(e) In addition to the duties under Subsection (d), the Department of State Health Services shall:

(1) collect data under this subchapter and coordinate the collection of data under this subchapter with other data collection activities;

(2) perform annual statistical studies of the incidence and causes of child fatalities using the data collected under this subchapter; and

(3) evaluate the available child fatality data and use the data to create public health strategies for the prevention of child fatalities.

(f) Not later than April 1 of each even-numbered year, the committee shall publish a report that contains aggregate child fatality data collected by local child fatality review teams, recommendations to prevent child fatalities and injuries, and recommendations to the department on child protective services operations based on input from the child safety review subcommittee. The committee shall submit a copy of the report to the governor, lieutenant governor, speaker of the house of representatives, Department of State Health Services, and department and make the report available to the public. Not later than October 1 of each even-numbered year, the department shall submit a written response to the committee's recommendations to the committee, governor, lieutenant governor, speaker of the house of representatives, and Department of State Health Services describing which of the committee's recommendations regarding the operation of the child protective services system the department will implement and the methods of implementation.

(g) The committee shall perform the functions and duties required of a citizen review panel under 42 U.S.C. Section 5106a(c)(4)(A).

(h) Each member of the committee must be a member of the child fatality review team in the county where the committee member resides unless the committee member is an appointed representative of a state agency.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 957, Sec. 4, eff. Sept. 1, 2001. Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.57, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 396 (S.B. 802), Sec. 2, eff. September 1, 2007. Acts 2013, 83rd Leg., R.S., Ch. 1145 (S.B. 66), Sec. 2, eff. September 1, 2013. Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 6, eff. Sept. 1, 2017.

Sec. 264.5031. COLLECTION OF NEAR FATALITY DATA

(a) In this section, "near fatality" means a case where a physician has certified that a child is in critical or serious condition, and a caseworker determines that the child's condition was caused by the abuse or neglect of the child.

(b) The department shall include near fatality child abuse or neglect cases in the child fatality case database, for cases in which child abuse or neglect is determined to have been the cause of the near fatality. The department must also develop a data collection strategy for near fatality child abuse or neglect cases.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 7, eff. Sept. 1, 2017.

Sec. 264.5032. REPORT ON CHILD FATALITY AND NEAR FATALITY DATA

(a) The department shall produce an aggregated report relating to child fatality and near fatality cases resuing from child abuse or neglect containing the following information:

(1) any prior contact the department had with the child's family and the manner in which the case was disposed, including cases in which the department made the following dispositions:

(A) priority none or administrative closure;

(B) call screened out;

(C) alternative or differential response provided;

(D) unable to complete the investigation;

(E) unable to determine whether abuse or neglect occurred;

(F) reason to believe abuse or neglect occurred; or

(G) child removed and placed into substitute care;

(2) for any case investigated by the department involving the child or the child's family:

(A) the number of caseworkers assigned to the case before the fatality or near fatality occurred; and

(B) the caseworker's caseload at the time the case was opened and at the time the case was closed;

(3) for any case in which the department investigation concluded that there was reason to believe that abuse or neglect occurred, and the family was referred to family-based safety services:

(A) the safety plan provided to the family;

(B) the services offered to the family; and

(C) the level of compliance with the safety plan or completion of the services by the family;

(4) the number of contacts the department made with children and families in family-based safety services cases; and

(5) the initial and attempted contacts the department made with child abuse and neglect victims.

(b) In preparing the part of the report required by Subsection (a)(1), the department shall include information contained in department records retained in accordance with the department's records retention schedule.

(c) The report produced under this section must protect the identity of individuals involved in a case that is included in the report.

(d) The department may combine the report required under this section with the annual child fatality report required to be produced under Section 261.204.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 7, eff. Sept. 1, 2017.

Sec. 264.504. MEETINGS OF COMMITTEE

(a) Except as provided by Subsections (b), (c), and (d), meetings of the committee are subject to the open meetings law, Chapter 551, Government Code, as if the committee were a governmental body under that chapter.

(b) Any portion of a meeting of the committee during which the committee discusses an individual child's death is closed to the public and is not subject to the open meetings law, Chapter 551, Government Code.

(c) Information identifying a deceased child, a member of the child's family, a guardian or caretaker of the child, or an alleged or suspected perpetrator of abuse or neglect of the child may not be disclosed during a public meeting. On a majority vote of the committee members, the members shall remove from the committee any member who discloses information described by this subsection in a public meeting.

(d) Information regarding the involvement of a state or local agency with the deceased child or another person described by Subsection (c) may not be disclosed during a public meeting.

(e) The committee may conduct an open or closed meeting by telephone conference call or other electronic medium. A meeting held under this subsection is subject to the notice requirements applicable to other meetings. The notice of the meeting must specify as the location of the meeting the location where meetings of the committee are usually held. Each part of the meeting by telephone conference call that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape-recorded. The tape recording shall be made available to the public.

(f) This section does not prohibit the committee from requesting the attendance at a closed meeting of a person who is not a member of the committee and who has information regarding a deceased child.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.58, eff. September 1, 2005.

Sec. 264.505. ESTABLISHMENT OF REVIEW TEAM

(a) A multidisciplinary and multiagency child fatality review team may be established for a county to review child deaths in that county. A county may join with an adjacent county or counties to establish a combined review team.

(b) Any person who may be a member of a review team under Subsection (c) may initiate the establishment of a review team and call the first organizational meeting of the team.

(c) A review team must reflect the diversity of the county's population and may include:

(1) a criminal prosecutor involved in prosecuting crimes against children;

(2) a sheriff;

(3) a justice of the peace or medical examiner;

(4) a police chief;

(5) a pediatrician experienced in diagnosing and treating child abuse and neglect;

(6) a child educator;

(7) a child mental health provider;

(8) a public health professional;

(9) a child protective services specialist;

(10) a sudden infant death syndrome family service provider;

(11) a neonatologist;

(12) a child advocate;

(13) a chief juvenile probation officer; and

(14) a child abuse prevention specialist.

(d) Members of a review team may select additional team members according to community resources and needs.

(e) A review team shall select a presiding officer from its members.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.59, eff. September 1, 2005. Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 8, eff. Sept. 1, 2017.

Sec. 264.506. PURPOSE AND DUTIES OF REVIEW TEAM

(a) The purpose of a review team is to decrease the incidence of preventable child deaths by:

(1) providing assistance, direction, and coordination to investigations of child deaths;

(2) promoting cooperation, communication, and coordination among agencies involved in responding to child fatalities;

(3) developing an understanding of the causes and incidence of child deaths in the county or counties in which the review team is located;

(4) recommending changes to agencies, through the agency's representative member, that will reduce the number of preventable child deaths; and

(5) advising the committee on changes to law, policy, or practice that will assist the team and the agencies represented on the team in fulfilling their duties.

(b) To achieve its purpose, a review team shall:

(1) adapt and implement, according to local needs and resources, the model protocols developed by the department and the committee;

(2) meet on a regular basis to review child fatality cases and recommend methods to improve coordination of services and investigations between agencies that are represented on the team;

(3) collect and maintain data as required by the committee;

(4) review and analyze the collected data to identify any demographic trends in child fatality cases, including whether there is a disproportionate number of child fatalities in a particular population group or geographic area; and

(5) submit to the vital statistics unit data reports on deaths reviewed as specified by the committee.

(c) A review team shall initiate prevention measures as indicated by the review team's findings.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.197, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 9, eff. Sept. 1, 2017.

Sec. 264.507. DUTIES OF PRESIDING OFFICER

The presiding officer of a review team shall:

(1) send notices to the review team members of a meeting to review a child fatality;

(2) provide a list to the review team members of each child fatality to be reviewed at the meeting;

(3) submit data reports to the vital statistics unit not later than the 30th day after the date on which the review took place; and

(4) ensure that the review team operates according to the protocols developed by the department and the committee, as adapted by the review team.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.198, eff. April 2, 2015.

Sec. 264.508. REVIEW PROCEDURE

(a) The review team of the county in which the injury, illness, or event that was the cause of the death of the child occurred, as stated on the child's death certificate, shall review the death.

(b) On receipt of the list of child fatalities under Section 264.507, each review team member shall review the member's records and the records of the member's agency for information regarding each listed child.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995.

Sec. 264.509. ACCESS TO INFORMATION

(a) A review team may request information and records regarding a deceased child as necessary to carry out the review team's purpose and duties. Records and information that may be requested under this section include:

(1) medical, dental, and mental health care information; and

(2) information and records maintained by any state or local government agency, including:

(A) a birth certificate;

(B) law enforcement investigative data;

(C) medical examiner investigative data;

(D) juvenile court records;

(E) parole and probation information and records; and

(F) child protective services information and records.

(b) On request of the presiding officer of a review team, the custodian of the relevant information and records relating to a deceased child shall provide those records to the review team at no cost to the review team.

(b–1) The Department of State Health Services shall provide a review team with electronic access to the preliminary death certificate for a deceased child.

(c) This subsection does not authorize the release of the original or copies of the mental health or medical records of any member of the child's family or the guardian or caretaker of the child or an alleged or suspected perpetrator of abuse or neglect of the child which are in the possession of any state or local government agency as provided in Subsection (a)(2). Information relating to the mental health or medical condition of a member of the child's family or the guardian or caretaker of the child or the alleged or suspected perpetrator of abuse or neglect of the child acquired as part of an investigation by a state or local government agency as provided in Subsection (a)(2) may be provided to the review team.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.60, eff. September 1, 2005. Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 10, eff. Sept. 1, 2017.

Sec. 264.510. MEETING OF REVIEW TEAM

(a) A meeting of a review team is closed to the public and not subject to the open meetings law, Chapter 551, Government Code.

(b) This section does not prohibit a review team from requesting the attendance at a closed meeting of a person who is not a member of the review team and who has information regarding a deceased child.

(c) Except as necessary to carry out a review team's purpose and duties, members of a review team and persons attending a review team meeting may not disclose what occurred at the meeting.

(d) A member of a review team participating in the review of a child death is immune from civil or criminal liability arising from information presented in or opinions formed as a result of a meeting.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995.

Sec. 264.511. USE OF INFORMATION AND RECORDS; CONFIDENTIALITY

(a) Information and records acquired by the committee or by a review team in the exercise of its purpose and duties under this subchapter are confidential and exempt from disclosure under the open records law, Chapter 552, Government Code, and may only be disclosed as necessary to carry out the committee's or review team's purpose and duties.

(b) A report of the committee or of a review team or a statistical compilation of data reports is a public record subject to the open records law, Chapter 552, Government Code, as if the committee or review team were a governmental body under that chapter, if the report or statistical compilation does not contain any information that would permit the identification of an individual.

(c) A member of a review team may not disclose any information that is confidential under this section.

(d) Information, documents, and records of the committee or of a review team that are confidential under this section are not subject to subpoena or discovery and may not be introduced into evidence in

any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or introduction into evidence solely because they were presented during proceedings of the committee or a review team or are maintained by the committee or a review team.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995.

Sec. 264.512. GOVERNMENTAL UNITS

The committee and a review team are governmental units for purposes of Chapter 101, Civil Practice and Remedies Code. A review team is a unit of local government under that chapter.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995.

Sec. 264.513. REPORT OF DEATH OF CHILD

(a) A person who knows of the death of a child younger than six years of age shall immediately report the death to the medical examiner of the county in which the death occurs or, if the death occurs in a county that does not have a medical examiner's office or that is not part of a medical examiner's district, to a justice of the peace in that county.

(b) The requirement of this section is in addition to any other reporting requirement imposed by law, including any requirement that a person report child abuse or neglect under this code.

(c) A person is not required to report a death under this section that is the result of a motor vehicle accident. This subsection does not affect a duty imposed by another law to report a death that is the result of a motor vehicle accident.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995.

Sec. 264.514. PROCEDURE IN THE EVENT OF REPORTABLE DEATH

(a) A medical examiner or justice of the peace notified of a death of a child under Section 264.513 shall hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death is unexpected or the result of abuse or neglect. An inquest is not required under this subchapter if the child's death is expected and is due to a congenital or neoplastic disease. A death caused by an infectious disease may be considered an expected death if:

(1) the disease was not acquired as a result of trauma or poisoning;

(2) the infectious organism is identified using standard medical procedures; and

(3) the death is not reportable to the Department of State Health Services under Chapter 81, Health and Safety Code.

(a–1) The commissioners court of a county shall adopt regulations relating to the timeliness for conducting an inquest into the death of a child. The regulations adopted under this subsection must be as stringent as the standards issued by the National Association of Medical Examiners unless the commissioners court determines that it would be cost prohibitive for the county to comply with those standards.

(b) The medical examiner or justice of the peace shall immediately notify an appropriate local law enforcement agency if the medical examiner or justice of the peace determines that the death is unexpected or the result of abuse or neglect, and that agency shall investigate the child's death. The medical examiner or justice of the peace shall notify the appropriate county child fatality review team of the child's death not later than the 120th day after the date the death is reported.

(c) In this section, the terms "abuse" and "neglect" have the meaning assigned those terms by Section 261.001.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 95, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1301, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 785, Sec. 3, eff. Sept. 1, 1999. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.199, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 11(a), eff. Sept. 1, 2017.

Sec. 264.515. INVESTIGATION

(a) The investigation required by Section 264.514 must include:

(1) an autopsy, unless an autopsy was conducted as part of the inquest;

(2) an inquiry into the circumstances of the death, including an investigation of the scene of the death and interviews with the parents of the child, any guardian or caretaker of the child, and the person who reported the child's death; and

(3) a review of relevant information regarding the child from an agency, professional, or health care provider.

(b) The review required by Subsection (a)(3) must include a review of any applicable medical record, child protective services record, record maintained by an emergency medical services provider, and law enforcement report.

(c) The committee shall develop a protocol relating to investigation of an unexpected death of a child under this section. In developing the protocol, the committee shall consult with individuals and organizations that have knowledge and experience in the issues of child abuse and child deaths.

Added by Acts 1995, 74th Leg., ch. 255, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER G. COURT-APPOINTED VOLUNTEER ADVOCATE PROGRAMS

Sec. 264.601. DEFINITIONS

In this chapter:

(1) "Abused or neglected child" means a child who is:

(A) the subject of a suit affecting the parent-child relationship filed by a governmental entity; and

(B) under the control or supervision of the department.

(2) "Volunteer advocate program" means a volunteer-based, nonprofit program that:

(A) provides advocacy services to abused or neglected children with the goal of obtaining a permanent placement for a child that is in the child's best interest; and

(B) complies with recognized standards for volunteer advocate programs.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1224 (S.B. 1369), Sec. 3, eff. September 1, 2009.

Sec. 264.602. CONTRACTS WITH ADVOCATE PROGRAMS

(a) The statewide organization with which the commission contracts under Section 264.603 shall contract for services with eligible volunteer advocate programs to provide advocacy services to abused or neglected children.

(b) The contract under this section may not result in reducing the financial support a volunteer advocate program receives from another source.

(c) The commission shall develop a scale of state financial support for volunteer advocate programs that declines over a six-year period beginning on the date each individual contract takes effect. After the end of the six-year period, the commission may not provide more than 50 percent of the volunteer advocate program's funding.

(d) The executive commissioner by rule shall adopt standards for a local volunteer advocate program. The statewide organization shall assist the executive commissioner in developing the standards.

(e) The department, in cooperation with the statewide organization with which the commission contracts under Section 264.603 and other interested agencies, shall support the expansion of court-appointed volunteer advocate programs into counties in which there is a need for the programs. In expanding into a county, a program shall work to ensure the independence of the program, to the extent possible, by establishing community support and accessing private funding from the community for the program.

(f) Expenses incurred by a volunteer advocate program to promote public awareness of the need for volunteer advocates or to explain the work performed by volunteer advocates that are paid with money from the commission volunteer advocate program account under Section 504.611, Transportation Code, are not considered administrative expenses for the purpose of Section 264.603(b).

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 118, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 7, eff. Sept. 1, 1997. Amended by: Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.61, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 1224 (S.B. 1369), Sec. 4, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 4, eff. September 1, 2015.

Sec. 264.603. ADMINISTRATIVE CONTRACTS

(a) The commission shall contract with one statewide organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code and designated as a supporting organization under Section 509(a)(3) of that code, and that is composed of individuals or groups of individuals who have expertise in the dynamics of child abuse and neglect and experience in operating volunteer advocate programs to provide training, technical assistance, and evaluation services for the benefit of local volunteer advocate programs. The contract shall:

(1) include measurable goals and objectives relating to the number of:

(A) volunteer advocates in the program; and

(B) children receiving services from the program; and

(2) follow practices designed to ensure compliance with standards referenced in the contract.

(b) The contract under this section shall provide that not more than 12 percent of the annual legislative appropriation to implement this subchapter may be spent for administrative purposes by the statewide organization with which the commission contracts under this section.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 119, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 600, Sec. 20, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1224 (S.B. 1369), Sec. 5, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 5, eff. September 1, 2015.

Sec. 264.604. ELIGIBILITY FOR CONTRACTS

(a) A person is eligible for a contract under Section 264.602 only if the person is a public or private nonprofit entity that operates a volunteer advocate program that:

(1) uses individuals appointed as volunteer advocates or guardians ad litem by the court to provide for the needs of abused or neglected children;

(2) has provided court-appointed advocacy services for at least six months;

(3) provides court-appointed advocacy services for at least 10 children each month; and

(4) has demonstrated that the program has local judicial support.

(b) The statewide organization with which the commission contracts under Section 264.603 may not contract with a person that is not eligible under this section. However, the statewide organization may waive the requirement in Subsection (a)(3) for an established program in a rural area or under other special circumstances.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 120, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 8, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1224 (S.B. 1369), Sec. 6, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 6, eff. September 1, 2015.

Sec. 264.605. CONTRACT FORM

A person shall apply for a contract under Section 264.602 on a form provided by the commission.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 7, eff. September 1, 2015.

Sec. 264.606. CRITERIA FOR AWARD OF CONTRACTS

The statewide organization with which the commission contracts under Section 264.603 shall consider the following in awarding a contract under Section 264.602:

(1) the volunteer advocate program's eligibility for and use of funds from local, state, or federal governmental sources, philanthropic organizations, and other sources;

(2) community support for the volunteer advocate program as indicated by financial contributions from civic organizations, individuals, and other community resources;

(3) whether the volunteer advocate program provides services that encourage the permanent placement of children through reunification with their families or timely placement with an adoptive family; and

(4) whether the volunteer advocate program has the endorsement and cooperation of the local juvenile court system.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 121, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 8, eff. September 1, 2015.

Sec. 264.607. CONTRACT REQUIREMENTS

The commission shall require that a contract under Section 264.602 require the volunteer advocate program to:

(1) make quarterly and annual financial reports on a form provided by the commission;

(2) cooperate with inspections and audits that the commission makes to ensure service standards and fiscal responsibility; and

(3) provide as a minimum:

(A) independent and factual information in writing to the court and to counsel for the parties involved regarding the child;

(B) advocacy through the courts for permanent home placement and rehabilitation services for the child;

(C) monitoring of the child to ensure the safety of the child and to prevent unnecessary movement of the child to multiple temporary placements;

(D) reports in writing to the presiding judge and to counsel for the parties involved;

(E) community education relating to child abuse and neglect;

(F) referral services to existing community services;

(G) a volunteer recruitment and training program, including adequate screening procedures for volunteers;

(H) procedures to assure the confidentiality of records or information relating to the child; and

(I) compliance with the standards adopted under Section 264.602.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 122, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 9, eff. Sept. 1, 1997. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1224 (S.B. 1369), Sec. 7, eff. September 1, 2009. Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 9, eff. September 1, 2015.

Sec. 264.608. REPORT TO THE LEGISLATURE

(a) Not later than December 1 of each year, the committion shall publish a report that:

(1) summarizes reports from volunteer advocate programs under contract with the commission;

(2) analyzes the effectiveness of the contracts made by the commission under this chapter; and

(3) provides information on:

(A) the expenditure of funds under this chapter;

(B) services provided and the number of children for whom the services were provided; and

(C) any other information relating to the services provided by the volunteer advocate programs under this chapter.

(b) The commission shall submit copies of the report to the governor, lieutenant governor, speaker of the house of representatives, Legislative Budget Board, and members of the legislature.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 21, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 10, eff. September 1, 2015.

Sec. 264.609. RULE-MAKING AUTHORITY

The executive commissioner may adopt rules necessary to implement this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 11, eff. September 1, 2015.

Sec. 264.610. CONFIDENTIALITY

The commission may not disclose information gained through reports, collected case data, or inspections that would identify a person working at or receiving services from a volunteer advocate program.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 12, eff. September 1, 2015.

Sec. 264.611. CONSULTATIONS

In implementing this chapter, the commission shall consult with individuals or groups of individuals who have expertise in the dynamics of child abuse and neglect and experience in operating volunteer advocate programs.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 13, eff. September 1, 2015.

Sec. 264.612. FUNDING

(a) The commission may solicit and receive grants or money from either private or public sources, including by appropriation by the legislature from the general revenue fund, to implement this chapter.

(b) The need for and importance of the implementation of this chapter by the commission requires priority and preferential consideration for appropriation.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 128, eff. Sept. 1, 1995. Amended by: Acts 2015, 84th Leg., R.S., Ch. 597 (S.B. 354), Sec. 14, eff. September 1, 2015.

Sec. 264.613. USE OF INFORMATION AND RECORDS; CONFIDENTIALITY

(a) The files, reports, records, communications, and working papers used or developed in providing services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this subchapter.

(b) Information described by Subsection (a) may be disclosed to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families;

(2) the attorney for the child who is the subject of the information; and

(3) eligible children's advocacy centers.

(c) Information related to the investigation of a report of abuse or neglect of a child under Chapter 261 and services provided as a result of the investigation are confidential as provided by Section 261.201.

Added by Acts 2001, 77th Leg., ch. 142, Sec. 1, eff. May 16, 2001.

Sec. 264.614. INTERNET APPLICATION FOR CASE TRACKING AND INFORMATION MANAGEMENT SYSTEM

(a) Subject to the availability of money as described by Subsection (c), the department shall develop an Internet application that allows a court-appointed volunteer advocate representing a child in the managing conservatorship of the department to access the child's case file through the department's automated case tracking and information management system and to add the volunteer advocate's findings and reports to the child's case file.

(b) The court-appointed volunteer advocate shall maintain the confidentiality required by this chapter and department rule for the information accessed by the advocate through the system described by Subsection (a).

(c) The department may use money appropriated to the department and money received as a gift, grant, or donation to pay for the costs of developing and maintaining the Internet application required by Subsection (a). The department may solicit and accept gifts, grants, and donations of any kind and from any source for purposes of this section.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 205 (H.B. 1227), Sec. 1, eff. September 1, 2013. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.200, eff. April 2, 2015.

SUBCHAPTER H. REPEALED

SUBCHAPTER I. RELATIVE AND OTHER DESIGNATED CAREGIVER PLACEMENT PROGRAM

Sec. 264.751. DEFINITIONS

In this subchapter:

(1) "Designated caregiver" means an individual who has a longstanding and significant relationship with a child **or the family of a child** for whom the department has been appointed managing conservator and who:

(A) is appointed to provide substitute care for the child, but is not verified by a licensed child-placing agency to operate an agency foster home under Chapter 42, Human Resources Code; or

(B) is subsequently appointed permanent managing conservator of the child after providing the care described by Paragraph (A).

(2) "Relative" means a person related to a child by consanguinity as determined under Section 573.022, Government Code.

(3) "Relative caregiver" means a relative who:

(A) provides substitute care for a child for whom the department has been appointed managing conservator, but who is not verified by a licensed child-placing agency to operate an agency foster home under Chapter 42, Human Resources Code; or

(B) is subsequently appointed permanent managing conservator of the child after providing the care described by Paragraph (A).

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.62((a)), eff. September 1, 2005. Amended by: Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 7, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(c), eff. September 1, 2009. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 34, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 3390, Sec. 12, eff. May 27, 2019.

Sec. 264.752. RELATIVE AND OTHER DESIGNATED CAREGIVER PLACEMENT PROGRAM

(a) The department shall develop and procure a program to:

(1) promote continuity and stability for children for whom the department is appointed managing conservator by placing those children with relative or other designated caregivers; and

(2) facilitate relative or other designated caregiver placements by providing assistance and services to those caregivers in accordance with this subchapter and rules adopted by the executive commissioner.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(38), eff. September 1, 2015.

(c) The executive commissioner shall adopt rules necessary to implement this subchapter. The rules must include eligibility criteria for receiving assistance and services under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.62((a)), eff. September 1, 2005. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(38), eff. September 1, 2015.

ANNOTATIONS

In re K.P.C., No. 14-17-00993-CV, 2018 WL 2106669 (Tex. App.—Houston [14th Dist.] May 8, 2018, pet. denied) (mem. op.). Termination still proper even if the TDFPS has failed to consider placement with a parent's relatives.

Sec. 264.753. EXPEDITED PLACEMENT

The department shall expedite the completion of the background and criminal history check, the home study, and any other administrative procedure to ensure that the child is placed with a qualified relative or caregiver as soon as possible after the date the caregiver is identified.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.62((a)), eff. September 1, 2005. Amended by: Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.201, eff. April 2, 2015.

Sec. 264.754. ASSESSMENT OF PROPOSED PLACEMENT

(a) In this section, "low-risk criminal offense" means a nonviolent criminal offense, including a fraud-based offense, the department determines has a low risk of impacting:

(1) a child's safety or well-being; or

(2) the stability of a child's placement with a relative or other designated caregiver.

(b) Before placing a child with a proposed relative or other designated caregiver, the department must conduct an assessment to determine whether the proposed placement is in the child's best interest.

(c) If the department disqualifies a person from serving as a relative or other designated caregiver for a child on the basis that the person has been convicted of a low-risk criminal offense, the person may appeal the disqualification in accordance with the procedure developed under Subsection (d).

(d) The department shall develop:

(1) a list of criminal offenses the department determines are low-risk criminal offenses; and

(2) a procedure for appropriate regional administration of the department to review a decision to disqualify a person from serving as a relative or other designated caregiver that includes the consideration of:

(A) when the person's conviction occurred;

(B) whether the person has multiple convictions for low-risk criminal offenses; and

(C) the likelihood that the person will commit fraudulent activity in the future.

(e) The department shall:

(1) publish the list of low-risk criminal offenses and information regarding the review procedure developed under Subsection (d) on the department's Internet website; and

(2) provide prospective relative and other designated caregivers information regarding the review procedure developed under Subsection (d).

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.62((a)), eff. September 1, 2005. Amended by Acts 2017, 85th Leg., R.S., Ch. 587 (S.B. 879), Sec. 1, eff. Sept. 1, 2017.

PRACTICE TIPS

If the proposed relative or other designated caregiver lives in another state, the TDFPS must comply with the Interstate Compact on the Placement of Children, Tex. Fam. Code ch. 162, subch. B.

Sec. 264.7541. CAREGIVER VISIT WITH CHILD; INFORMATION

(a) Except as provided by Subsection (b), before placing a child with a proposed relative or other designated caregiver, the department must:

(1) arrange a visit between the child and the proposed caregiver; and

(2) provide the proposed caregiver with a form, which may be the same form the department provides to nonrelative caregivers, containing information, to the extent it is available, about the child that would enhance continuity of care for the child, including:

(A) the child's school information and educational needs;

(B) the child's medical, dental, and mental health care information;

(C) the child's social and family information; and

(D) any other information about the child the department determines will assist the proposed caregiver in meeting the child's needs.

(b) The department may waive the requirements of Subsection (a) if the proposed relative or other designated caregiver has a long-standing or significant relationship with the child and has provided care for the child at any time during the 12 months preceding the date of the proposed placement.

(c) Once a child is placed with a relative or other designated caregiver, the department shall inform the caregiver of:

(1) the option to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and

(2) the permanency care assistance program under Subchapter K.

Added by Acts 2013, 83rd Leg., R.S., Ch. 426 (S.B. 502), Sec. 1, eff. September 1, 2013. Amended by Acts 2019, 86th Leg., H.B. 1884, Sec. 6, eff. Sept. 1, 2019.

Sec. 264.755. CAREGIVER ASSISTANCE AGREEMENT

(a) The department shall, subject to the availability of funds, enter into a caregiver assistance agreement with each relative or other designated caregiver to provide monetary assistance and additional support services to the caregiver. The monetary assistance and support services shall be based on a family's need, as determined by Subsection (b) and rules adopted by the executive commissioner.

(a–1) When a relative or other designated caregiver enters into a caregiver assistance agreement under Subsection (a), the department shall inform the caregiver of:

(1) the option to become verified by a licensed child-placing agency to operate an agency foster home, if applicable; and

(2) the permanency care assistance program under Subchapter K.

(b) The department shall provide monetary assistance under this section to a caregiver who has a family income that is less than or equal to 300 percent of the federal poverty level. Monetary assistance provided to a caregiver under this section may not exceed 50 percent of the department's daily basic fos-

ter care rate for the child. A caregiver who has a family income greater than 300 percent of the federal poverty level is not eligible for monetary assistance under this section.

(b–1) The department shall disburse monetary assistance provided to a caregiver under Subsection (b) in the same manner as the department disburses payments to a foster parent. The department may not provide monetary assistance to an eligible caregiver under Subsection (b) after the first anniversary of the date the caregiver receives the first monetary assistance payment from the department under this section. The department, at its discretion and for good cause, may extend the monetary assistance payments for an additional six months.

(b–2) The department shall implement a process to verify the family income of a relative or other designated caregiver for the purpose of determining eligibility to receive monetary assistance under Subsection (b).

(c) Monetary assistance and additional support services provided under this section may include:

(1) case management services and training and information about the child's needs until the caregiver is appointed permanent managing conservator;

(2) referrals to appropriate state agencies administering public benefits or assistance programs for which the child, the caregiver, or the caregiver's family may qualify;

(3) family counseling not provided under the Medicaid program for the caregiver's family for a period not to exceed two years from the date of initial placement;

(4) if the caregiver meets the eligibility criteria determined by rules adopted by the executive commissioner, reimbursement of all child-care expenses incurred while the child is under 13 years of age, or under 18 years of age if the child has a developmental disability, and while the department is the child's managing conservator; and

(5) if the caregiver meets the eligibility criteria determined by rules adopted by the executive commissioner, reimbursement of 50 percent of child-care expenses incurred after the caregiver is appointed permanent managing conservator of the child while the child is under 13 years of age, or under 18 years of age if the child has a developmental disability.

(d) The department, in accordance with department rules, shall implement a process to verify that each relative and designated caregiver who is seeking monetary assistance or additional support services from the department for day care as defined by Section 264.124 for a child under this section has attempted to find appropriate day-care services for the child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools. The department shall specify the documentation the relative or designated caregiver must provide to the department to demonstrate compliance with the requirements established under this subsection. The department may not provide monetary assistance or additional support services to the relative or designated caregiver for the day care unless the department receives the required verification.

(e) The department may provide monetary assistance or additional support services to a relative or designated caregiver for day care without the verification required under Subsection (d) if the department determines the verification would prevent an emergency placement that is in the child's best interest.

(f) If a person who has a family income that is less than or equal to 300 percent of the federal poverty level enters into a caregiver assistance agreement with the department, obtains permanent managing conservatorship of a child, and meets all other eligibility requirements, the person may receive an annual reimbursement of other expenses for the child, as determined by rules adopted by the executive commissioner, not to exceed $500 per year until the earlier of:

(1) the third anniversary of the date the person was awarded permanent managing conservatorship of the child; or

(2) the child's 18th birthday.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.62((a)), eff. September 1, 2005. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 423 (S.B. 430), Sec. 2, eff. September 1, 2013. Acts 2013, 83rd Leg., R.S., Ch. 426 (S.B. 502), Sec. 2, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 1.202, eff. April 2, 2015. Acts 2017, 85th Leg., R.S., Ch. 315 (H.B. 4), Sec. 1, eff. Sept. 1, 2017. Acts 2019, 86th Leg., H.B. 1884, Sec. 7, eff. Sept. 1, 2019.

Section 6 of Acts 2017, 85th Leg., H.B. 4 states—

"This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature. If the legislature does not appropriate money specifically for the purpose of implementing this Act, this Act has no effect."

Sec. 264.7551. FRAUDULENT AGREEMENT; CRIMINAL OFFENSE; CIVIL PENALTY

(a) A person commits an offense if, with intent to defraud or deceive the department, the person knowingly makes or causes to be made a false statement or misrepresentation of a material fact that allows a person to enter into a caregiver assistance agreement.

(b) An offense under this section is:

(1) a Class C misdemeanor if the person entered into a fraudulent caregiver assistance agreement and received no monetary assistance under the agreement or received monetary assistance under the agreement for less than 7 days;

(2) a Class B misdemeanor if the person entered into a fraudulent caregiver assistance agreement and received monetary assistance under the agreement for 7 days or more but less than 31 days;

(3) a Class A misdemeanor if the person entered into a fraudulent caregiver assistance agreement and received monetary assistance under the agreement for 31 days or more but less than 91 days; or

(4) a state jail felony if the person entered into a fraudulent caregiver assistance agreement and received monetary assistance under the agreement for 91 days or more.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(d) The appropriate county prosecuting attorney shall be responsible for the prosecution of an offense under this section.

(e) A person who engaged in conduct described by Subsection (a) is liable to the state for a civil penalty of $1,000. The attorney general shall bring an action to recover a civil penalty as authorized by this subsection.

(f) The commissioner of the department may adopt rules necessary to determine whether fraudulent activity that violates Subsection (a) has occurred.

Added by Acts 2017, 85th Leg., R.S., Ch. 315 (H.B. 4), Sec. 2, eff. Sept. 1, 2017.

Section 6 of Acts 2017, 85th Leg., H.B. 4 states—

"This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature. If the legislature does not appropriate money specifically for the purpose of implementing this Act, this Act has no effect."

Sec. 264.756. ASSISTANCE WITH PERMANENT PLACEMENT

The department shall collaborate with the State Bar of Texas and local community partners to identify legal resources to assist relatives and other designated caregivers in obtaining conservatorship, adoption, or other permanent legal status for the child.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.62((a)), eff. September 1, 2005.

Sec. 264.757. COORDINATION WITH OTHER AGENCIES

The department shall coordinate with other health and human services agencies, as defined by Section 531.001, Government Code, to provide assistance and services under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.62((a)), eff. September 1, 2005.

Sec. 264.758. FUNDS

The department and other state agencies shall actively seek and use federal funds available for the purposes of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.62((a)), eff. September 1, 2005.

Sec. 264.760. ELIGIBILITY FOR FOSTER CARE PAYMENTS AND PERMANENCY CARE ASSISTANCE

Notwithstanding any other provision of this subchapter, a relative or other designated caregiver who becomes verified by a licensed child-placing agency to operate an agency foster home under Chapter 42, Human Resources Code, may receive foster care payments in lieu of the benefits provided by this subchapter, beginning with the first month in which the relative or other designated caregiver becomes licensed or is verified.

Added by Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 8, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(d), eff. September 1, 2009. Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 35, eff. Sept. 1, 2017.

Sec. 264.762. ANNUAL REPORT

Not later than September 1 of each year, the department shall publish a report on the relative and other designated caregiver placement program created under this subchapter. The report must include data on permanency outcomes for children placed with relative or other designated caregivers, including:

(1) the number of disruptions in a relative or other designated caregiver placement;

(2) the reasons for any disruption in a relative or other designated caregiver placement; and

(3) the length of time before a relative or other designated caregiver who receives monetary assistance from the department under this subchapter obtains permanent managing conservatorship of a child.

Added by Acts 2017, 85th Leg., R.S., Ch. 315 (H.B. 4), Sec. 3, eff. Sept. 1, 2017.

Section 6 of Acts 2017, 85th Leg., H.B. 4 states—

"This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature. If the legislature does not appropriate money specifically for the purpose of implementing this Act, this Act has no effect."

SUBCHAPTER K. PERMANENCY CARE ASSISTANCE PROGRAM

Sec. 264.851. DEFINITIONS

In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(39), eff. September 1, 2015.

(2) "Kinship provider" means a relative of a foster child, or another adult with a longstanding and significant relationship with a foster child before the child was placed with the person by the department, with whom the child resides for at least six consecutive months after the person becomes licensed by the department or verified by a licensed child-placing agency or the department to provide foster care.

(3) "Permanency care assistance agreement" means a written agreement between the department and a kinship provider for the payment of permanency care assistance benefits as provided by this subchapter.

(4) "Permanency care assistance benefits" means monthly payments paid by the department to a kinship provider under a permanency care assistance agreement.

(5) "Relative" means a person related to a foster child by consanguinity or affinity.

Added by Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 9, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(e), eff. September 1, 2009. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(39), eff. September 1, 2015.

Sec. 264.852. PERMANENCY CARE ASSISTANCE AGREEMENTS

(a) The department shall enter into a permanency care assistance agreement with a kinship provider who is eligible to receive permanency care assistance benefits.

(b) The department may enter into a permanency care assistance agreement with a kinship provider who is the prospective managing conservator of a foster child only if the kinship provider meets the eligibility criteria under federal and state law and department rule.

(c) A court may not order the department to enter into a permanency care assistance agreement with a kinship provider unless the kinship provider meets the eligibility criteria under federal and state law and department rule, including requirements relating to the criminal history background check of a kinship provider.

(d) A permanency care assistance agreement may provide for reimbursement of the nonrecurring expenses a kinship provider incurs in obtaining permanent managing conservatorship of a foster child,

including attorney's fees and court costs. The reimbursement of the nonrecurring expenses under this subsection may not exceed $2,000.

Added by Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 9, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(e), eff. September 1, 2009.

Sec. 264.8521. NOTICE TO APPLICANTS

At the time a person applies to become verified by a licensed child-placing agency to provide foster care in order to qualify for the permanency care assistance program, the department or the child-placing agency shall:

(1) notify the applicant that a background check, including a criminal history record check, will be conducted on the individual; and

(2) inform the applicant about criminal convictions that:

(A) preclude an individual from becoming a verified agency foster home; and

(B) may also be considered in evaluating the individual's application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 318 (H.B. 2370), Sec. 1, eff. September 1, 2011. Amended by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 36, eff. Sept. 1, 2017.

Sec. 264.853. RULES

The executive commissioner shall adopt rules necessary to implement the permanency care assistance program. The rules must:

(1) establish eligibility requirements to receive permanency care assistance benefits under the program; and

(2) ensure that the program conforms to the requirements for federal assistance as required by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351).

Added by Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 9, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(e), eff. September 1, 2009.

Sec. 264.854. MAXIMUM PAYMENT AMOUNT

The executive commissioner shall set the maximum monthly amount of assistance payments under a permanency care assistance agreement in an amount that does not exceed the amount of the monthly foster care maintenance payment the department would pay to a foster care provider caring for the child for whom the kinship provider is caring.

Added by Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 9, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(e), eff. September 1, 2009.

Sec. 264.855. CONTINUED ELIGIBILITY FOR PERMANENCY CARE ASSISTANCE BENEFITS AFTER AGE 18

If the department first entered into a permanency care assistance agreement with a foster child's kinship provider after the child's 16th birthday, the department may continue to provide permanency care assistance payments until the last day of the month of the child's 21st birthday, provided the child is:

(1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate;

(2) regularly attending an institution of higher education or a postsecondary vocational or technical program;

(3) participating in a program or activity that promotes, or removes barriers to, employment;

(4) employed for at least 80 hours a month; or

(5) incapable of any of the activities described by Subdivisions (1)–(4) due to a documented medical condition.

Added by Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 9, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(e), eff. October 1, 2010.

Sec. 264.856. APPROPRIATION REQUIRED

The department is not required to provide permanency care assistance benefits under this subchapter unless the department is specifically appropriated money for purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1118 (H.B. 1151), Sec. 9, eff. September 1, 2009. Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 6(e), eff. September 1, 2009.

SUBCHAPTER L. PARENTAL CHILD SAFETY PLACEMENTS

Sec. 264.901. DEFINITIONS

In this subchapter:

(1) "Caregiver" means an individual, other than a child's parent, conservator, or legal guardian, who is related to the child or has a long-standing and significant relationship with the child or the child's family.

(2) "Parental child safety placement" means a temporary out-of-home placement of a child with a caregiver that is made by a parent or other person with whom the child resides in accordance with a written agreement approved by the department that ensures the safety of the child:

(A) during an investigation by the department of alleged abuse or neglect of the child; or

(B) while the parent or other person is receiving services from the department.

(3) "Parental child safety placement agreement" means an agreement between a parent or other person making a parental child safety placement and the caregiver that contains the terms of the placement and is approved by the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 1, eff. September 1, 2011.

Sec. 264.902. PARENTAL CHILD SAFETY PLACEMENT AGREEMENT

(a) A parental child safety placement agreement must include terms that clearly state:

(1) the respective duties of the person making the placement and the caregiver, including a plan for how the caregiver will access necessary medical treatment for the child and the caregiver's duty to ensure that a school-age child is enrolled in and attending school;

(2) conditions under which the person placing the child may have access to the child, including how often the person may visit and the circumstances under which the person's visit may occur;

(3) the duties of the department;

(4) the date on which the agreement will terminate unless terminated sooner or extended to a subsequent date as provided under department policy; and

(5) any other term the department determines necessary for the safety and welfare of the child.

(b) A parental child safety placement agreement must contain the following statement in boldface type and capital letters: "YOUR AGREEMENT TO THE PARENTAL CHILD SAFETY PLACEMENT IS NOT AN ADMISSION OF CHILD ABUSE OR NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION OF CHILD ABUSE OR NEGLECT."

(c) A parental child safety placement agreement must be in writing and signed by the person making the placement and the caregiver.

(d) The department must provide a written copy of the parental child safety placement agreement to the person making the placement and the caregiver.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 1, eff. September 1, 2011.

Sec. 264.903. CAREGIVER EVALUATION

(a) The department shall develop policies and procedures for evaluating a potential caregiver's qualifications to care for a child under this subchapter, including policies and procedures for evaluating:

(1) the criminal history of a caregiver;

(2) allegations of abuse or neglect against a caregiver; and

(3) a caregiver's home environment and ability to care for the child.

(a–1) The department shall expedite the evaluation of a potential caregiver under this section to ensure that the child is placed with a caregiver who has the ability to protect the child from the alleged perpetrator of abuse or neglect against the child.

(b) A department caseworker who performs an evaluation of a caregiver under this section shall document the results of the evaluation in the department's case records.

(c) If, after performing an evaluation of a potential caregiver, the department determines that it is not in the child's best interest to be placed with the caregiver, the department shall notify the person who proposed the caregiver and the proposed caregiver of the reasons for the department's decision, but may not disclose the specifics of any criminal history or allegations of abuse or neglect unless the caregiver agrees to the disclosure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 1, eff. September 1, 2011. Amended by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 12, eff. Sept. 1, 2017.

Sec. 264.904. DEPARTMENT PROCEDURES FOR CLOSING CASE

(a) Before closing a case in which the department has approved a parental child safety placement, the department must develop a plan with the person who made the placement and the caregiver for the safe return of the child to the person who placed the child with the caregiver or to another person legally entitled to possession of the child, as appropriate.

(b) The department may close a case with a child still living with the caregiver in a parental child safety placement if the department has determined that the child could safely return to the parent or person who made the parental child safety placement but the parent or other person agrees in writing for the child to continue to reside with the caregiver.

(c) If the department determines that the child is unable to safely return to the parent or person who made the parental child safety placement, the department shall determine whether the child can remain safely in the home of the caregiver or whether the department must seek legal conservatorship of the child in order to ensure the child's safety.

(d) Before the department may close a case with a child still living in a parental child safety placement, the department must:

(1) determine and document in the case file that the child can safely remain in the placement without the department's supervision;

(2) obtain the written agreement of the parent or person who made the parental child safety placement, if possible;

(3) obtain the caregiver's agreement in writing that the child can continue living in the placement after the department closes the case; and

(4) develop a written plan for the child's care after the department closes the case.

(e) The department is not required to comply with Subsection (d) if the department has filed suit seeking to be named conservator of the child under Chapter 262 and been denied conservatorship of the child.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 1, eff. September 1, 2011.

Sec. 264.905. REMOVAL OF CHILD BY DEPARTMENT

This subchapter does not prevent the department from removing a child at any time from a person who makes a parental child safety placement or from a caregiver if removal is determined to be necessary by the department for the safety and welfare of the child as provided by Chapter 262.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 1, eff. September 1, 2011.

Sec. 264.906. PLACEMENT PREFERENCE DURING CONSERVATORSHIP

If, while a parental child safety placement agreement is in effect, the department files suit under Chapter 262 seeking to be named managing conservator of the child, the department shall give priority

to placing the child with the parental child safety placement caregiver as long as the placement is safe and available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1071 (S.B. 993), Sec. 1, eff. September 1, 2011.

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SUBCHAPTER A. PREVENTION AND EARLY INTERVENTION SERVICES

Sec. 265.001. DEFINITIONS

In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Division" means the prevention and early intervention services division within the department.

(3) "Prevention and early intervention services" means programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

Added by Acts 1999, 76th Leg., ch. 489, Sec. 2, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 632 (H.B. 662), Sec. 1, eff. June 15, 2007.

Sec. 265.002. PREVENTION AND EARLY INTERVENTION SERVICES DIVISION

(a) The department shall operate a division to provide services for children in at-risk situations and for the families of those children and to achieve the consolidation of prevention and early intervention services within the jurisdiction of a single agency in order to avoid fragmentation and duplication of services and to increase the accountability for the delivery and administration of these services. The division shall be called the prevention and early intervention services division and shall have the following duties:

(1) to plan, develop, and administer a comprehensive and unified delivery system of prevention and early intervention services to children and their families in at-risk situations;

(2) to improve the responsiveness of services for at-risk children and their families by facilitating greater coordination and flexibility in the use of funds by state and local service providers;

(3) to provide greater accountability for prevention and early intervention services in order to demonstrate the impact or public benefit of a program by adopting outcome measures; and

(4) to assist local communities in the coordination and development of prevention and early intervention services in order to maximize federal, state, and local resources.

(b) The department's prevention and early intervention services division must be organizationally separate from the department's divisions performing child protective services and adult protective services functions.

Added by Acts 1999, 76th Leg., ch. 489, Sec. 2, eff. Sept. 1, 1999. Amended by: Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.13, eff. September 1, 2015.

Sec. 265.003. CONSOLIDATION OF PROGRAMS

(a) In order to implement the duties provided in Section 265.002, the department shall consolidate into the division programs with the goal of providing early intervention or prevention of at-risk behavior that leads to child abuse, delinquency, running away, truancy, and dropping out of school.

(b) The division may provide additional prevention and early intervention services in accordance with Section 265.002.

Added by Acts 1999, 76th Leg., ch. 489, Sec. 2, eff. Sept. 1, 1999.

Sec. 265.004. USE OF EVIDENCE-BASED PROGRAMS FOR AT-RISK FAMILIES

(a) To the extent that money is appropriated for the purpose, the department shall fund evidence-based programs, including parenting education, home visitation, family support services, mentoring, positive youth development programs, and crisis counseling, offered by community-based organizations that are designed to prevent or ameliorate child abuse and neglect. The programs funded under this subsection may be offered by a child welfare board established under Section 264.005, a local governmental board granted the powers and duties of a child welfare board under state law, a children's advocacy center established under Section 264.402, or other persons determined appropriate by the department.

(a–1) The department shall ensure that not less than 75 percent of the money appropriated for parenting education programs under Subsection (a) funds evidence-based programs described by Section 265.151(b) and that the remainder of that money funds promising practice programs described by Section 265.151(c).

(a–2) The department shall actively seek and apply for any available federal funds to support parenting education programs provided under this section.

(b) The department shall place priority on programs that target children whose race or ethnicity is disproportionately represented in the child protective services system.

(c) The department shall periodically evaluate the evidence-based abuse and neglect prevention programs to determine the continued effectiveness of the programs.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.64, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 526 (S.B. 813), Sec. 4, eff. June 16, 2007. Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 3, eff. September 1, 2015; Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(7), eff. September 1, 2017.

Sec. 265.0041. COLLABORATION WITH INSTITUTIONS OF HIGHER EDUCATION

(a) Subject to the availability of funds, the Health and Human Services Commission, on behalf of the department, shall enter into agreements with institutions of higher education to conduct efficacy reviews of any prevention and early intervention programs that have not previously been evaluated for effectiveness through a scientific research evaluation process.

(b) Subject to the availability of funds, the department shall collaborate with an institution of higher education to create and track indicators of child well-being to determine the effectiveness of prevention and early intervention services.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 20, eff. Sept. 1, 2017.

Sec. 265.005. STRATEGIC PLAN

(a) The department shall develop and implement a five-year strategic plan for prevention and early intervention services. Not later than September 1 of the last fiscal year in each five-year period, the department shall issue a new strategic plan for the next five fiscal years beginning with the following fiscal year.

(b) A strategic plan required under this section must:

(1) identify methods to leverage other sources of funding or provide support for existing community-based prevention efforts;

(2) include a needs assessment that identifies programs to best target the needs of the highest risk populations and geographic areas;

(3) identify the goals and priorities for the department's overall prevention efforts;

(4) report the results of previous prevention efforts using available information in the plan;

(5) identify additional methods of measuring program effectiveness and results or outcomes;

(6) identify methods to collaborate with other state agencies on prevention efforts;

(7) identify specific strategies to implement the plan and to develop measures for reporting on the overall progress toward the plan's goals; ~~and~~

(8) identify strategies and goals for increasing the number of families receiving prevention and early intervention services each year, subject to the availability of funds, to reach targets set by the department for providing services to families that are eligible to receive services through parental education, family support, and community-based programs financed with federal, state, local, or private resources; **and**

(9) ~~(8)~~ identify specific strategies to increase local capacity for the delivery of prevention and early intervention services through collaboration with communities and stakeholders.

(c) The department shall coordinate with interested parties and communities in developing the strategic plan under this section.

(d) The department shall annually update the strategic plan developed under this section.

(e) The department shall post the strategic plan developed under this section and any update to the plan on its Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 62, eff. September 1, 2015. Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 4, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 13, eff. Sept. 1, 2017. Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 21, eff. Sept. 1, 2017. Section 265.005(b) reenacted and amended by Acts 2019, 86th Leg., H.B. 4170, Sec. 7.007, eff. Sept. 1, 2019.

Sec. 265.006. PROHIBITION ON USE OF AGENCY NAME OR LOGO

The department may not allow the use of the department's name or identifying logo or insignia on forms or other materials related to the department's prevention and early intervention services that are:

(1) provided by the department's contractors; or

(2) distributed by the department's contractors to the department's clients.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.14, eff. September 1, 2015.

Sec. 265.007. IMPROVING PROVISION OF PREVENTION AND EARLY INTERVENTION SERVICES

(a) To improve the effectiveness and delivery of prevention and early intervention services, the department shall:

(1) identify geographic areas that have a high need for prevention and early intervention services but do not have prevention and early intervention services available in the area or have only unevaluated prevention and early intervention services available in the area; and

(2) develop strategies for community partners to:

(A) improve the early recognition of child abuse or neglect;

(B) improve the reporting of child abuse and neglect; and

(C) reduce child fatalities.

(b) The department may not use data gathered under this section to identify a specific family or individual.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 14, eff. Sept. 1, 2017.

Sec. 265.008. Evaluation of Prevention and Early Intervention Services

(a) The department may enter into agreements with institutions of higher education to conduct efficacy reviews of any prevention and early intervention services provided under this chapter that have not previously been evaluated for effectiveness in a research evaluation. The efficacy review shall include, when possible, a cost-benefit analysis of the program to the state and, when applicable, the return on investment of the program to the state.

(b) The department may not enter into an agreement to conduct a program efficacy evaluation under this section unless:

(1) the agreement with the institution of higher education is cost neutral; and

(2) the department and institution of higher education conducting the evaluation under this section protect the identity of individuals who are receiving services from the department that are being evaluated.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 14, eff. Sept. 1, 2017.

SUBCHAPTER B. CHILD ABUSE AND NEGLECT PRIMARY PREVENTION PROGRAMS

Sec. 265.051. Definitions

In this subchapter:

(1) "Children's trust fund" means a child abuse and neglect primary prevention program.

(2) "Primary prevention" means services and activities available to the community at large or to families to prevent child abuse and neglect before it occurs. The term includes infant mortality prevention education programs.

(3) "Operating fund" means the Department of Family and Protective Services child abuse and neglect prevention operating fund account.

(4) "State agency" means a board, commission, department, office, or other state agency that:

(A) is in the executive branch of the state government;

(B) was created by the constitution or a statute of this state; and

(C) has statewide jurisdiction.

(5) "Trust fund" means the child abuse and neglect prevention trust fund account.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015. Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Sec. 265.052. CHILD ABUSE AND NEGLECT PRIMARY PREVENTION PROGRAMS

(a) The department shall operate the children's trust fund to:

(1) set policy, offer resources for community primary prevention programs, and provide information and education on prevention of child abuse and neglect;

(2) develop a state plan for expending funds for child abuse and neglect primary prevention programs that includes an annual schedule of transfers of trust fund money to the operating fund;

(3) develop eligibility criteria for applicants requesting funding for child abuse and neglect primary prevention programs; and

(4) establish funding priorities for child abuse and neglect primary prevention programs.

(b) The children's trust fund shall accommodate the department's existing rules and policies in procuring, awarding, and monitoring contracts and grants.

(c) The department may:

(1) apply for and receive funds made available by the federal government or another public or private source for administering programs under this subchapter and for funding for child abuse and neglect primary prevention programs; and

(2) solicit donations for child abuse and neglect primary prevention programs.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015. Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Sec. 265.053. ADMINISTRATIVE AND OTHER COSTS

(a) Administrative costs under this subchapter during any fiscal year may not exceed an amount equal to 50 percent of the interest credited to the trust fund during the preceding fiscal year.

(b) Funds expended under a special project grant from a governmental source or a nongovernmental source for public education or public awareness may not be counted as administrative costs for the purposes of this section.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015. Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Sec. 265.054. CHILD ABUSE AND NEGLECT PREVENTION TRUST FUND ACCOUNT

(a) The child abuse and neglect prevention trust fund account is an account in the general revenue fund. Money in the trust fund is dedicated to child abuse and neglect primary prevention programs.

(b) The department may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year the department may not transfer more than the amount appropriated for the operating fund for that fiscal year. Money transferred to the operating fund that was originally deposited to the credit of the trust fund under Section 118.022, Local Government Code, may be used only for child abuse and neglect primary prevention programs.

(c) Interest earned on the trust fund shall be credited to the trust fund.

(d) The trust fund is exempt from the application of Section 403.095, Government Code.

(e) All marriage license fees and other fees collected for and deposited in the trust fund and interest earned on the trust fund balance shall be appropriated each biennium only to the operating fund for child abuse and neglect primary prevention programs.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015. Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Sec. 265.055. DEPARTMENT OPERATING FUND ACCOUNT

(a) The operating fund is an account in the general revenue fund.

(b) Administrative and other costs allowed in Section 265.053 shall be taken from the operating fund. The department may transfer funds contained in the operating fund to the trust fund at any time.

(c) The legislature may appropriate the money in the operating fund to carry out the provisions of this subchapter.

(d) The operating fund is exempt from the application of Section 403.095, Government Code.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015. Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Sec. 265.056. CONTRIBUTIONS

(a) The department may solicit contributions from any appropriate source.

(b) Any other contributions for child abuse and neglect primary prevention or other prevention and early intervention programs shall be deposited into a separate designated fund in the state treasury and shall be used for that designated purpose.

(c) A person may contribute funds to either the trust fund, the operating fund, or a fund designated by the department for a specific child abuse and neglect primary prevention or other prevention or early intervention purpose.

(d) If a person designates that a contribution is intended as a donation to a specific fund, the contribution shall be deposited in the designated fund.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015. Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Sec. 265.057. COMMUNITY YOUTH DEVELOPMENT GRANTS

(a) Subject to available funding, the department shall award community youth development grants to communities identified by incidence of crime. The department shall give priority in awarding grants under this section to areas of the state in which there is a high incidence of juvenile crime.

(b) The purpose of a grant under this section is to assist a community in alleviating conditions in the family and community that lead to juvenile crime.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.03(a), eff. Sept. 1, 1997. Transferred and redesignated from Human Resources Code, Section 40.0561 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 64, eff. September 1, 2015. Transferred and redesignated from Human Resources Code, Section 40.0561 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 6, eff. September 1, 2015.

SUBCHAPTER C. NURSE-FAMILY PARTNERSHIP COMPETITIVE GRANT PROGRAM

Sec. 265.101. DEFINITIONS

In this subchapter:

(1) "Competitive grant program" means the nurse-family partnership competitive grant program established under this subchapter.

(2) "Partnership program" means a nurse-family partnership program.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Sec. 265.102. OPERATION OF NURSE-FAMILY PARTNERSHIP COMPETITIVE GRANT PROGRAM

(a) The department shall operate a nurse-family partnership competitive grant program through which the department will award grants for the implementation of nurse-family partnership programs, or the expansion of existing programs, and for the operation of those programs for a period of not less than two years.

(b) The department shall award grants under the program to applicants, including applicants operating existing programs, in a manner that ensures that the partnership programs collectively:

(1) operate in multiple communities that are geographically distributed throughout this state; and

(2) provide program services to approximately 2,000 families.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Sec. 265.103. PARTNERSHIP PROGRAM REQUIREMENTS

A partnership program funded through a grant awarded under this subchapter must:

(1) strictly adhere to the program model developed by the Nurse-Family Partnership National Service Office, including any clinical, programmatic, and data collection requirements of that model;

(2) require that registered nurses regularly visit the homes of low-income, first-time mothers participating in the program to provide services designed to:

(A) improve pregnancy outcomes;

(B) improve child health and development;

(C) improve family economic self-sufficiency and stability; and

(D) reduce the incidence of child abuse and neglect;

(3) require that nurses who provide services through the program:

(A) receive training from the office of the attorney general at least once each year on procedures by which a person may voluntarily acknowledge the paternity of a child and on the availability of child support services from the office;

(B) provide a mother with information about the rights, responsibilities, and benefits of establishing the paternity of her child, if appropriate;

(C) provide assistance to a mother and the alleged father of her child if the mother and alleged father seek to voluntarily acknowledge paternity of the child, if appropriate; and

(D) provide information to a mother about the availability of child support services from the office of the attorney general; and

(4) require that the regular nurse visits described by Subdivision (2) begin not later than a mother's 28th week of gestation and end when her child reaches two years of age.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Sec. 265.104. APPLICATION

(a) A public or private entity, including a county, municipality, or other political subdivision of this state, may apply for a grant under this subchapter.

(b) To apply for a grant, an applicant must submit a written application to the department on a form prescribed by the department in consultation with the Nurse-Family Partnership National Service Office.

(c) The application prescribed by the department must:

(1) require the applicant to provide data on the number of low-income, first-time mothers residing in the community in which the applicant proposes to operate or expand a partnership program and provide a description of existing services available to those mothers;

(2) describe the ongoing monitoring and evaluation process to which a grant recipient is subject under Section 265.109, including the recipient's obligation to collect and provide information requested by the department under Section 265.109(c); and

(3) require the applicant to provide other relevant information as determined by the department.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Sec. 265.105. ADDITIONAL CONSIDERATIONS IN AWARDING GRANTS

In addition to the factors described by Sections 265.102(b) and 265.103, in determining whether to award a grant to an applicant under this subchapter, the department shall consider:

(1) the demonstrated need for a partnership program in the community in which the applicant proposes to operate or expand the program, which may be determined by considering:

(A) the poverty rate, the crime rate, the number of births to Medicaid recipients, the rate of poor birth outcomes, and the incidence of child abuse and neglect during a prescribed period in the community; and

(B) the need to enhance school readiness in the community;

(2) the applicant's ability to participate in ongoing monitoring and performance evaluations under Section 265.109, including the applicant's ability to collect and provide information requested by the department under Section 265.109(c);

(3) the applicant's ability to adhere to the partnership program standards adopted under Section 265.106;

(4) the applicant's ability to develop broad-based community support for implementing or expanding a partnership program, as applicable; and

(5) the applicant's history of developing and sustaining innovative, high-quality programs that meet the needs of families and communities.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Sec. 265.106. PARTNERSHIP PROGRAM STANDARDS

The commissioner, with the assistance of the Nurse-Family Partnership National Service Office, shall adopt standards for the partnership programs funded under this subchapter. The standards must adhere to the Nurse-Family Partnership National Service Office program model standards and guidelines that were developed in multiple, randomized clinical trials and have been tested and replicated in multiple communities.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 15, eff. Sept. 1, 2017.

Sec. 265.107. USE OF AWARDED GRANT FUNDS

The grant funds awarded under this subchapter may be used only to cover costs related to implementing or expanding and operating a partnership program, including costs related to:

(1) administering the program;

(2) training and managing registered nurses who participate in the program;

(3) paying the salaries and expenses of registered nurses who participate in the program;

(4) paying for facilities and equipment for the program; and

(5) paying for services provided by the Nurse-Family Partnership National Service Office to ensure a grant recipient adheres to the organization's program model.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Sec. 265.108. STATE NURSE CONSULTANT

Using money appropriated for the competitive grant program, the department shall hire or contract with a state nurse consultant to assist grant recipients with implementing or expanding and operating the partnership programs in the applicable communities.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Sec. 265.109. PROGRAM MONITORING AND EVALUATION; ANNUAL COMMITTEE REPORTS

(a) The department, with the assistance of the Nurse-Family Partnership National Service Office, shall:

(1) adopt performance indicators that are designed to measure a grant recipient's performance with respect to the partnership program standards adopted by the commissioner under Section 265.106;

(2) use the performance indicators to continuously monitor and formally evaluate on an annual basis the performance of each grant recipient; and

(3) prepare and submit an annual report, not later than December 1 of each year, to the Senate Health and Human Services Committee, or its successor, and the House Human Services Committee, or its successor, regarding the performance of each grant recipient during the preceding state fiscal year with respect to providing partnership program services.

(b) The report required under Subsection (a)(3) must include:

(1) the number of low-income, first-time mothers to whom each grant recipient provided partnership program services and, of that number, the number of mothers who established the paternity of an alleged father as a result of services provided under the program;

(2) the extent to which each grant recipient made regular visits to mothers during the period described by Section 265.103(4); and

(3) the extent to which each grant recipient adhered to the Nurse-Family Partnership National Service Office's program model, including the extent to which registered nurses:

(A) conducted home visitations comparable in frequency, duration, and content to those delivered in Nurse-Family Partnership National Service Office clinical trials; and

(B) assessed the health and well-being of mothers and children participating in the partnership programs in accordance with indicators of maternal, child, and family health defined by the department in consultation with the Nurse-Family Partnership National Service Office.

(c) On request, each grant recipient shall timely collect and provide data and any other information required by the department to monitor and evaluate the recipient or to prepare the report required by this section.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 16, eff. Sept. 1, 2017.

Sec. 265.110. COMPETITIVE GRANT PROGRAM FUNDING

(a) The department shall actively seek and apply for any available federal funds, including federal Medicaid and Temporary Assistance for Needy Families (TANF) funds, to assist in financing the competitive grant program established under this subchapter.

(b) The department may use appropriated funds from the state government and may accept gifts, donations, and grants of money from the federal government, local governments, private corporations, or other persons to assist in financing the competitive grant program.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

SUBCHAPTER D. PARENTING EDUCATION

Sec. 265.151. PARENTING EDUCATION PROGRAMS

(a) A parenting education program provided by the department must be an evidence-based program or a promising practice program described by this section.

(b) An evidence-based program is a parenting education program that:

(1) is research-based and grounded in relevant, empirical knowledge and program-determined outcomes;

(2) has comprehensive standards ensuring the highest quality service delivery with continuous improvement in the quality of service delivery;

(3) has demonstrated significant positive short-term and long-term outcomes;

(4) has been evaluated by at least one rigorous, random, controlled research trial across heterogeneous populations or communities with research results that have been published in a peer-reviewed journal;

(5) substantially complies with a program manual or design that specifies the purpose, outcomes, duration, and frequency of the program services; and

(6) employs well-trained and competent staff and provides continual relevant professional development opportunities to the staff.

(c) A promising practice program is a parenting education program that:

(1) has an active impact evaluation program or demonstrates a schedule for implementing an active impact evaluation program;

(2) has been evaluated by at least one outcome-based study demonstrating effectiveness or random, controlled trial in a homogeneous sample;

(3) substantially complies with a program manual or design that specifies the purpose, outcomes, duration, and frequency of the program services;

(4) employs well-trained and competent staff and provides continual relevant professional development opportunities to the staff; and

(5) is research-based and grounded in relevant, empirical knowledge and program-determined outcomes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015. Redesignated from Sec. 265.101 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.

Sec. 265.152. Outcomes of Evidence-Based Parenting Education

The department shall ensure that a parenting education program provided under this chapter achieves favorable behavioral outcomes in at least two of the following areas:

(1) improved cognitive development of children;

(2) increased school readiness of children;

(3) reduced child abuse, neglect, and injury;

(4) improved child safety;

(5) improved social-emotional development of children;

(6) improved parenting skills, including nurturing and bonding;

(7) improved family economic self-sufficiency;

(8) reduced parental involvement with the criminal justice system; and

(9) increased paternal involvement and support.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015. Redesignated from Sec. 265.102 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.

Sec. 265.153. Evaluation of Evidence-Based Parenting Education

(a) The department shall adopt outcome indicators to measure the effectiveness of parenting education programs provided under this chapter in achieving desired outcomes.

(b) The department may work directly with the model developer of a parenting education program to identify appropriate outcome indicators for the program and to ensure that the program substantially complies with the model.

(c) The department shall develop internal processes to share information with parenting education programs to assist the department in analyzing the performance of the programs.

(d) The department shall use information obtained under this section to:

(1) monitor parenting education programs;

(2) continually improve the quality of the programs; and

(3) evaluate the effectiveness of the programs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015. Redesignated from Sec. 265.103 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.

Sec. 265.154. REPORTS TO LEGISLATURE

(a) Not later than December 1 of each even-numbered year, the department shall prepare and submit a report on state-funded parenting education programs to the standing committees of the senate and house of representatives with jurisdiction over child protective services.

(b) A report submitted under this section must include:

(1) a description of the parenting education programs implemented and of the models associated with the programs;

(2) information on the families served by the programs, including the number of families served and their demographic information;

(3) the goals and achieved outcomes of the programs;

(4) information on the cost for each family served, including any available third-party return-on-investment analysis; and

(5) information explaining the percentage of money spent on evidence-based programs and on promising practice programs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015. Redesignated from Sec. 265.104 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.

Sec. 265.155. RULES

The commissioner of the department may adopt rules as necessary to implement this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 14, eff. Sept. 1, 2017. Redesignated from Sec. 265.105 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE E. PROTECTION OF THE CHILD

CHAPTER 266. MEDICAL CARE AND EDUCATIONAL SERVICES FOR CHILDREN IN CONSERVATORSHIP OF DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

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Sec. 266.001. DEFINITIONS

In this chapter:

(1) "Advanced practice nurse" has the meaning assigned by Section 157.051, Occupations Code.

(1–a) "Commission" means the Health and Human Services Commission.

(1–b) "Commissioner" means the commissioner of the Department of Family and Protective Services.

(2) "Department" means the Department of Family and Protective Services.

(2–a) "Drug research program" means any clinical trial, clinical investigation, drug study, or active medical or clinical research that has been approved by an institutional review board in accordance with the standards provided in the Code of Federal Regulations, 45 C.F.R. Sections 46.404 through 46.407, regarding:

(A) an investigational new drug; or

(B) the efficacy of an approved drug.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944, Sec. 86(40), eff. September 1, 2015.

(4–a) "Investigational new drug" has the meaning assigned by 21 C.F.R. Section 312.3(b).

(5) "Medical care" means all health care and related services provided under the medical assistance program under Chapter 32, Human Resources Code, and described by Section 32.003(4), Human Resources Code.

(6) "Physician assistant" has the meaning assigned by Section 157.051, Occupations Code.

(7) "Psychotropic medication" means a medication that is prescribed for the treatment of symptoms of psychosis or another mental, emotional, or behavioral disorder and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state. The term includes the following categories when used as described by this subdivision:

(A) psychomotor stimulants;

(B) antidepressants;

(C) antipsychotics or neuroleptics;

(D) agents for control of mania or depression;

(E) antianxiety agents; and

(F) sedatives, hypnotics, or other sleep-promoting medications.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 506 (S.B. 450), Sec. 1, eff. September 1, 2007. Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 7, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(40), eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 17, eff. Sept. 1, 2017.

Sec. 266.002. CONSTRUCTION WITH OTHER LAW

This chapter does not limit the right to consent to medical, dental, psychological, and surgical treatment under Chapter 32.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005.

Sec. 266.003. MEDICAL SERVICES FOR CHILD ABUSE AND NEGLECT VICTIMS

(a) The department shall collaborate with the commission and health care and child welfare professionals to design a comprehensive, cost-effective medical services delivery model, either directly or by contract, to meet the needs of children served by the department. The medical services delivery model must include:

(1) the designation of health care facilities with expertise in the forensic assessment, diagnosis, and treatment of child abuse and neglect as pediatric centers of excellence;

(2) a statewide telemedicine system to link department investigators and caseworkers with pediatric centers of excellence or other medical experts for consultation;

(3) identification of a medical home for each foster child on entering foster care at which the child will receive an initial comprehensive assessment as well as preventive treatments, acute medical services, and therapeutic and rehabilitative care to meet the child's ongoing physical and mental health needs throughout the duration of the child's stay in foster care;

(4) the development and implementation of health passports as described in Section 266.006;

(5) establishment and use of a management information system that allows monitoring of medical care that is provided to all children in foster care;

(6) the use of medical advisory committees and medical review teams, as appropriate, to establish treatment guidelines and criteria by which individual cases of medical care provided to children in foster care will be identified for further, in-depth review;

(7) development of the training program described by Section 266.004(h);

(8) provision for the summary of medical care described by Section 266.007; and

(9) provision for the participation of the person authorized to consent to medical care for a child in foster care in each appointment of the child with the provider of medical care.

(b) The department shall collaborate with health and human services agencies, community partners, the health care community, and federal health and social services programs to maximize services and benefits available under this section.

(c) The commissioner shall adopt rules necessary to implement this chapter.

(d) The commission is responsible for administering contracts with managed care providers for the provision of medical care to children in foster care. The department shall collaborate with the commission to ensure that medical care services provided by managed care providers match the needs of children in foster care.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 18, eff. Sept. 1, 2017.

Sec. 266.004. CONSENT FOR MEDICAL CARE

(a) Medical care may not be provided to a child in foster care unless the person authorized by this section has provided consent.

(b) Except as provided by Section 266.010, the court may authorize the following persons to consent to medical care for a foster child:

(1) an individual designated by name in an order of the court, including the child's foster parent or the child's parent, if the parent's rights have not been terminated and the court determines that it is in the best interest of the parent's child to allow the parent to make medical decisions on behalf of the child; or

(2) the department or an agent of the department.

(c) If the person authorized by the court to consent to medical care is the department or an agent of the department, the department shall, not later than the fifth business day after the date the court provides authorization, file with the court and each party the name of the individual who will exercise the duty and responsibility of providing consent on behalf of the department. The department may designate the child's foster parent or the child's parent, if the parent's rights have not been terminated, to exercise the duty and responsibility of providing consent on behalf of the department under this subsection. If the individual designated under this subsection changes, the department shall file notice of the change with the court and each party not later than the fifth business day after the date of the change.

(d) A physician or other provider of medical care acting in good faith may rely on the representation by a person that the person has the authority to consent to the provision of medical care to a foster child as provided by Subsection (b).

(e) The department, a person authorized to consent to medical care under Subsection (b), the child's parent if the parent's rights have not been terminated, a guardian ad litem or attorney ad litem if one has been appointed, or the person providing foster care to the child may petition the court for any order related to medical care for a foster child that the department or other person believes is in the best interest of the child. Notice of the petition must be given to each person entitled to notice under Section 263.0021(b).

(f) If a physician who has examined or treated the foster child has concerns regarding the medical care provided to the foster child, the physician may file a letter with the court stating the reasons for the physician's concerns. The court shall provide a copy of the letter to each person entitled to notice under Section 263.0021(b).

(g) On its own motion or in response to a petition under Subsection (e) or Section 266.010, the court may issue any order related to the medical care of a foster child that the court determines is in the best interest of the child.

(h) Notwithstanding Subsection (b), a person may not be authorized to consent to medical care provided to a foster child unless the person has completed a department-approved training program related to informed consent and the provision of all areas of medical care as defined by Section 266.001. This subsection does not apply to a parent whose rights have not been terminated unless the court orders the parent to complete the training.

(h–1) The training required by Subsection (h) must include training related to informed consent for the administration of psychotropic medication and the appropriate use of psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications.

(h–2) Each person required to complete a training program under Subsection (h) must acknowledge in writing that the person:

(1) has received the training described by Subsection (h–1);

(2) understands the principles of informed consent for the administration of psychotropic medication; and

(3) understands that non-pharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consenting to the use of a psychotropic medication.

(i) The person authorized under Subsection (b) to consent to medical care of a foster child shall participate in each appointment of the child with the provider of the medical care.

(j) Nothing in this section requires the identity of a foster parent to be publicly disclosed.

(k) The department may consent to health care services ordered or prescribed by a health care provider authorized to order or prescribe health care services regardless of whether the services are provided under the medical assistance program under Chapter 32, Human Resources Code, if the department otherwise has the authority under this section to consent to health care services.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 727 (H.B. 2580), Sec. 1, eff. June 15, 2007. Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 8, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 65, eff. September 1, 2015.

Sec. 266.0041. ENROLLMENT AND PARTICIPATION IN CERTAIN RESEARCH PROGRAMS

(a) Notwithstanding Section 266.004, a person may not authorize the enrollment of a foster child or consent to the participation of a foster child in a drug research program without a court order as provided by this section, unless the person is the foster child's parent and the person has been authorized by the court to make medical decisions for the foster child in accordance with Section 266.004.

(b) Before issuing an order authorizing the enrollment or participation of a foster child in a drug research program, the court must:

(1) appoint an independent medical advocate;

(2) review the report filed by the independent medical advocate regarding the advocate's opinion and recommendations concerning the foster child's enrollment and participation in the drug research program;

(3) consider whether the person conducting the drug research program:

(A) informed the foster child in a developmentally appropriate manner of the expected benefits of the drug research program, any potential side effects, and any available alternative treatments and received the foster child's assent to enroll the child to participate in the drug research program as required by the Code of Federal Regulations, 45 C.F.R. Section 46.408; or

(B) received informed consent in accordance with Subsection (h); and

(4) determine whether enrollment and participation in the drug research program is in the foster child's best interest and determine that the enrollment and participation in the drug research program will not interfere with the appropriate medical care of the foster child.

(c) An independent medical advocate appointed under Subsection (b) is not a party to the suit but may:

(1) conduct an investigation regarding the foster child's participation in a drug research program to the extent that the advocate considers necessary to determine:

(A) whether the foster child assented to or provided informed consent to the child's enrollment and participation in the drug research program; and

(B) the best interest of the child for whom the advocate is appointed; and

(2) obtain and review copies of the foster child's relevant medical and psychological records and information describing the risks and benefits of the child's enrollment and participation in the drug research program.

(d) An independent medical advocate shall, within a reasonable time after the appointment, interview:

(1) the foster child in a developmentally appropriate manner, if the child is four years of age or older;

(2) the foster child's parent, if the parent is entitled to notification under Section 266.005;

(3) an advocate appointed by an institutional review board in accordance with the Code of Federal Regulations, 45 C.F.R. Section 46.409(b), if an advocate has been appointed;

(4) the medical team treating the foster child as well as the medical team conducting the drug research program; and

(5) each individual who has significant knowledge of the foster child's medical history and condition, including any foster parent of the child.

(e) After reviewing the information collected under Subsections (c) and (d), the independent medical advocate shall:

(1) submit a report to the court presenting the advocate's opinion and recommendation regarding whether:

(A) the foster child assented to or provided informed consent to the child's enrollment and participation in the drug research program; and

(B) the foster child's best interest is served by enrollment and participation in the drug research program; and

(2) at the request of the court, testify regarding the basis for the advocate's opinion and recommendation concerning the foster child's enrollment and participation in a drug research program.

(f) The court may appoint any person eligible to serve as the foster child's guardian ad litem, as defined by Section 107.001, as the independent medical advocate, including a physician or nurse or an attorney who has experience in medical and health care, except that a foster parent, employee of a substitute care provider or child placing agency providing care for the foster child, representative of the department, medical professional affiliated with the drug research program, independent medical advocate appointed by an institutional review board, or any person the court determines has a conflict of interest may not serve as the foster child's independent medical advocate.

(g) A person otherwise authorized to consent to medical care for a foster child may petition the court for an order permitting the enrollment and participation of a foster child in a drug research program under this section.

(h) Before a foster child, who is at least 16 years of age and has been determined to have the capacity to consent to medical care in accordance with Section 266.010, may be enrolled to participate in a drug research program, the person conducting the drug research program must:

(1) inform the foster child in a developmentally appropriate manner of the expected benefits of participation in the drug research program, any potential side effects, and any available alternative treatments; and

(2) receive written informed consent to enroll the foster child for participation in the drug research program.

(i) A court may render an order approving the enrollment or participation of a foster child in a drug research program involving an investigational new drug before appointing an independent medical advocate if:

(1) a physician recommends the foster child's enrollment or participation in the drug research program to provide the foster child with treatment that will prevent the death or serious injury of the child; and

(2) the court determines that the foster child needs the treatment before an independent medical advocate could complete an investigation in accordance with this section.

(j) As soon as practicable after issuing an order under Subsection (i), the court shall appoint an independent medical advocate to complete a full investigation of the foster child's enrollment and participation in the drug research program in accordance with this section.

(k) This section does not apply to:

(1) a drug research study regarding the efficacy of an approved drug that is based only on medical records, claims data, or outcome data, including outcome data gathered through interviews with a child, caregiver of a child, or a child's treating professional;

(2) a retrospective drug research study based only on medical records, claims data, or outcome data; or

(3) the treatment of a foster child with an investigational new drug that does not require the child's enrollment or participation in a drug research program.

(l) The department shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and the relevant committees in both houses of the legislature, a report regarding:

(1) the number of foster children who enrolled or participated in a drug research program during the previous year;

(2) the purpose of each drug research program in which a foster child was enrolled or participated; and

(3) the number of foster children for whom an order was issued under Subsection (i).

(m) A foster parent or any other person may not receive a financial incentive or any other benefit for recommending or consenting to the enrollment and participation of a foster child in a drug research program.

Added by Acts 2007, 80th Leg., R.S., Ch. 506 (S.B. 450), Sec. 2, eff. September 1, 2007. Amended by: Acts 2015, 84th Leg., R.S., Ch. 722 (H.B. 1309), Sec. 3, eff. June 17, 2015. Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 66, eff. September 1, 2015.

Sec. 266.0042. CONSENT FOR PSYCHOTROPIC MEDICATION

Consent to the administration of a psychotropic medication is valid only if:

(1) the consent is given voluntarily and without undue influence; and

(2) the person authorized by law to consent for the foster child receives verbally or in writing information that describes:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication; and

(E) the generally accepted alternative medications and non-pharmacological interventions to the medication, if any, and the reasons for the proposed course of treatment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 9, eff. September 1, 2013.

Sec. 266.005. FINDING ON HEALTH CARE CONSULTATION

If a court finds that a health care professional has been consulted regarding a health care service, procedure, or treatment for a child in the conservatorship of the department and the court declines to follow the recommendation of the health care professional, the court shall make findings in the record supporting the court's order.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 38, eff. Sept. 1, 2017.

Sec. 266.006. HEALTH PASSPORT

(a) The commission, in conjunction with the department, and with the assistance of physicians and other health care providers experienced in the care of foster children and children with disabilities and with the use of electronic health records, shall develop and provide a health passport for each foster child. The passport must be maintained in an electronic format and use the department's existing computer resources to the greatest extent possible.

(b) The executive commissioner, in collaboration with the commissioner, shall adopt rules specifying the information required to be included in the passport. The required information may include:

(1) the name and address of each of the child's physicians and health care providers;

(2) a record of each visit to a physician or other health care provider, including routine checkups conducted in accordance with the Texas Health Steps program;

(3) an immunization record that may be exchanged with ImmTrac;

(4) a list of the child's known health problems and allergies;

(5) information on all medications prescribed to the child in adequate detail to permit refill of prescriptions, including the disease or condition that the medication treats; and

(6) any other available health history that physicians and other health care providers who provide care for the child determine is important.

(c) The system used to access the health passport must be secure and maintain the confidentiality of the child's health records.

(d) Health passport information shall be part of the department's record for the child as long as the child remains in foster care.

(e) The commission, in collaboration with the department, shall provide training or instructional materials to foster parents, physicians, and other health care providers regarding use of the health passport.

(f) The department shall make health passport information available in printed and electronic formats to the following individuals when a child is discharged from foster care:

(1) the child's legal guardian, managing conservator, or parent; or

(2) the child, if the child is at least 18 years of age or has had the disabilities of minority removed.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005. Amended by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 19, eff. Sept. 1, 2017.

Sec. 266.007. JUDICIAL REVIEW OF MEDICAL CARE

(a) At each hearing under Chapter 263, or more frequently if ordered by the court, the court shall review a summary of the medical care provided to the foster child since the last hearing. The summary must include information regarding:

(1) the nature of any emergency medical care provided to the child and the circumstances necessitating emergency medical care, including any injury or acute illness suffered by the child;

(2) all medical and mental health treatment that the child is receiving and the child's progress with the treatment;

(3) any medication prescribed for the child, the condition, diagnosis, and symptoms for which the medication was prescribed, and the child's progress with the medication;

(4) for a child receiving a psychotropic medication:

(A) any psychosocial therapies, behavior strategies, or other non-pharmacological interventions that have been provided to the child; and

(B) the dates since the previous hearing of any office visits the child had with the prescribing physician, physician assistant, or advanced practice nurse as required by Section 266.011;

(5) the degree to which the child or foster care provider has complied or failed to comply with any plan of medical treatment for the child;

(6) any adverse reaction to or side effects of any medical treatment provided to the child;

(7) any specific medical condition of the child that has been diagnosed or for which tests are being conducted to make a diagnosis;

(8) any activity that the child should avoid or should engage in that might affect the effectiveness of the treatment, including physical activities, other medications, and diet; and

(9) other information required by department rule or by the court.

(b) At or before each hearing under Chapter 263, the department shall provide the summary of medical care described by Subsection (a) to:

(1) the court;

(2) the person authorized to consent to medical treatment for the child;

(3) the guardian ad litem or attorney ad litem, if one has been appointed by the court;

(4) the child's parent, if the parent's rights have not been terminated; and

(5) any other person determined by the department or the court to be necessary or appropriate for review of the provision of medical care to foster children.

(c) At each hearing under Chapter 263, the foster child shall be provided the opportunity to express to the court the child's views on the medical care being provided to the child.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 12, eff. September 1, 2013.

Sec. 266.008. EDUCATION PASSPORT

(a) The department shall develop an education passport for each foster child. The department shall determine the format of the passport. The passport may be maintained in an electronic format. The passport must contain educational records of the child, including the names and addresses of educational providers, the child's grade-level performance, and any other educational information the department determines is important.

(b) The department shall maintain the passport as part of the department's records for the child as long as the child remains in foster care.

(c) The department shall make the passport available to:

(1) any person authorized by law to make educational decisions for the foster child;

(2) the person authorized to consent to medical care for the foster child; and

(3) a provider of medical care to the foster child if access to the foster child's educational information is necessary to the provision of medical care and is not prohibited by law.

(d) The department shall collaborate with the Texas Education Agency to develop policies and procedures to ensure that the needs of foster children are met in every school district.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 688 (H.B. 2619), Sec. 8, eff. September 1, 2013. Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 20, eff. Sept. 1, 2017.

Sec. 266.009. PROVISION OF MEDICAL CARE IN EMERGENCY

(a) Consent or court authorization for the medical care of a foster child otherwise required by this chapter is not required in an emergency during which it is immediately necessary to provide medical care to the foster child to prevent the imminent probability of death or substantial bodily harm to the child or others, including circumstances in which:

(1) the child is overtly or continually threatening or attempting to commit suicide or cause serious bodily harm to the child or others; or

(2) the child is exhibiting the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the child's health in serious jeopardy, serious impairment of bodily functions, or serious dysfunction of any bodily organ or part.

(b) The physician providing the medical care or designee shall notify the person authorized to consent to medical care for a foster child about the decision to provide medical care without consent or court authorization in an emergency not later than the second business day after the date of the provision of medical care under this section. This notification must be documented in the foster child's health passport.

(c) This section does not apply to the administration of medication under Subchapter G, Chapter 574, Health and Safety Code, to a foster child who is at least 16 years of age and who is placed in an inpatient mental health facility.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005.

Sec. 266.010. CONSENT TO MEDICAL CARE BY FOSTER CHILD AT LEAST 16 YEARS OF AGE

(a) A foster child who is at least 16 years of age may consent to the provision of medical care, except as provided by Chapter 33, if the court with continuing jurisdiction determines that the child has the capacity to consent to medical care. If the child provides consent by signing a consent form, the form must be written in language the child can understand.

(b) A court with continuing jurisdiction may make the determination regarding the foster child's capacity to consent to medical care during a hearing under Chapter 263 or may hold a hearing to make the determination on its own motion. The court may issue an order authorizing the child to consent to all or some of the medical care as defined by Section 266.001. In addition, a foster child who is at least 16 years of age, or the foster child's attorney ad litem, may file a petition with the court for a hearing. If the court determines that the foster child lacks the capacity to consent to medical care, the court may consider whether the foster child has acquired the capacity to consent to medical care at subsequent hearings under Section 263.5031.

(c) If the court determines that a foster child lacks the capacity to consent to medical care, the person authorized by the court under Section 266.004 shall continue to provide consent for the medical care of the foster child.

(d) If a foster child who is at least 16 years of age and who has been determined to have the capacity to consent to medical care refuses to consent to medical care and the department or private agency providing substitute care or case management services to the child believes that the medical care is appropriate, the department or the private agency may file a motion with the court requesting an order authorizing the provision of the medical care.

(e) The motion under Subsection (d) must include:

(1) the child's stated reasons for refusing the medical care; and

(2) a statement prepared and signed by the treating physician that the medical care is the proper course of treatment for the foster child.

(f) If a motion is filed under Subsection (d), the court shall appoint an attorney ad litem for the foster child if one has not already been appointed. The foster child's attorney ad litem shall:

(1) discuss the situation with the child;

(2) discuss the suitability of the medical care with the treating physician;

(3) review the child's medical and mental health records; and

(4) advocate to the court on behalf of the child's expressed preferences regarding the medical care.

(g) The court shall issue an order authorizing the provision of the medical care in accordance with a motion under Subsection (d) to the foster child only if the court finds, by clear and convincing evidence, after the hearing that the medical care is in the best interest of the foster child and:

(1) the foster child lacks the capacity to make a decision regarding the medical care;

(2) the failure to provide the medical care will result in an observable and material impairment to the growth, development, or functioning of the foster child; or

(3) the foster child is at risk of suffering substantial bodily harm or of inflicting substantial bodily harm to others.

(h) In making a decision under this section regarding whether a foster child has the capacity to consent to medical care, the court shall consider:

(1) the maturity of the child;

(2) whether the child is sufficiently well informed to make a decision regarding the medical care; and

(3) the child's intellectual functioning.

(i) In determining whether the medical care is in the best interest of the foster child, the court shall consider:

(1) the foster child's expressed preference regarding the medical care, including perceived risks and benefits of the medical care;

(2) likely consequences to the foster child if the child does not receive the medical care;

(3) the foster child's prognosis, if the child does receive the medical care; and

(4) whether there are alternative, less intrusive treatments that are likely to reach the same result as provision of the medical care.

(j) This section does not apply to emergency medical care. An emergency relating to a foster child who is at least 16 years of age, other than a child in an inpatient mental health facility, is governed by Section 266.009.

(k) This section does not apply to the administration of medication under Subchapter G, Chapter 574, Health and Safety Code, to a foster child who is at least 16 years of age and who is placed in an inpatient mental health facility.

(l) Before a foster child reaches the age of 16, the department or the private agency providing substitute care or case management services to the foster child shall advise the foster child of the right to a hearing under this section to determine whether the foster child may consent to medical care. The department or the private agency providing substitute care or case management services shall provide the foster child with training on informed consent and the provision of medical care as part of the Preparation for Adult Living Program.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.65(a), eff. September 1, 2005. Amended by: Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 67, eff. September 1, 2015.

Sec. 266.011. MONITORING USE OF PSYCHOTROPIC DRUG

The person authorized to consent to medical treatment for a foster child prescribed a psychotropic medication shall ensure that the child has been seen by the prescribing physician, physician assistant, or

advanced practice nurse at least once every 90 days to allow the physician, physician assistant, or advanced practice nurse to:

(1) appropriately monitor the side effects of the medication; and

(2) determine whether:

(A) the medication is helping the child achieve the treatment goals; and

(B) continued use of the medication is appropriate.

Added by Acts 2013, 83rd Leg., R.S., Ch. 204 (H.B. 915), Sec. 13, eff. September 1, 2013.

Sec. 266.012. COMPREHENSIVE ASSESSMENTS

(a) Not later than the 45th day after the date a child enters the conservatorship of the department, the child shall receive a developmentally appropriate comprehensive assessment. The assessment must include:

(1) a screening for trauma; and

(2) interviews with individuals who have knowledge of the child's needs.

(b) The department shall develop guidelines regarding the contents of an assessment report.

(c) A single source continuum contractor under Subchapter B–1, Chapter 264, providing therapeutic foster care services to a child shall ensure that the child receives a comprehensive assessment under this section at least once every 90 days.

Added by Acts 2015, 84th Leg., R.S., Ch. 11 (S.B. 125), Sec. 1, eff. September 1, 2015. Amended by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 22, eff. Sept. 1, 2017.

Sec. 266.013. CONTINUITY OF SERVICES PROVIDED BY COMMISSION

(a) In addition to the requirements of Section 266.003(d), the commission shall continue to provide any services to children in the conservatorship of the department that the commission provided to those children before September 1, 2017.

(b) Subsection (a) does not apply to any services provided by the commission in relation to a child's education passport created under Section 266.008.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 21, eff. Sept. 1, 2017.

TEXAS CONSTITUTION

ARTICLE 1

BILL OF RIGHTS
(selected sections)

Sec. 3a. EQUALITY UNDER THE LAW 1219

Sec. 32. MARRIAGE 1219

Sec. 3a. EQUALITY UNDER THE LAW

Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

Added Nov. 7, 1972.

Sec. 32. MARRIAGE

(a) Marriage in this state shall consist only of the union of one man and one woman.

(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.

Added Nov. 8, 2005.

TEXAS CONSTITUTION

ARTICLE 16

GENERAL PROVISIONS
(selected sections)

Sec. 15. SEPARATE AND COMMUNITY PROPERTY OF SPOUSES 1221

Sec. 28. GARNISHMENT OF WAGES 1221

Sec. 49. PROTECTION OF PERSONAL PROPERTY FROM FORCED SALE 1221

Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD 1221

Sec. 51. SIZE OF HOMESTEAD; USES; RELEASE OR REFINANCE OF EXISTING LIEN 1236

Sec. 52. DESCENT AND DISTRIBUTION OF HOMESTEAD; RESTRICTIONS ON PARTITION 1237

Sec. 15. SEPARATE AND COMMUNITY PROPERTY OF SPOUSES

All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; spouses also may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned or which thereafter might be acquired by only one of them, shall be the separate property of that spouse; if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from that gift of property; spouses may agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse; and spouses may agree in writing that all or part of the separate property owned by either or both of them shall be the spouses' community property.

Amended Nov. 2, 1948, Nov. 4, 1980, Nov. 3, 1987, and Nov. 2, 1999.

Sec. 28. GARNISHMENT OF WAGES

No current wages for personal service shall ever be subject to garnishment, except for the enforcement of court-ordered:

(1) child support payments; or

(2) spousal maintenance.

Amended Nov. 8, 1983, and Nov. 2, 1999.

Sec. 49. PROTECTION OF PERSONAL PROPERTY FROM FORCED SALE

The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor

of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the fifth day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for:

(i) an appraisal performed by a third party appraiser;

(ii) a property survey performed by a state registered or licensed surveyor;

(iii) a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law; or

(iv) a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) (repealed);

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)–(a)(5) or Subsection (a)(8) of this section;

(L) is scheduled to be repaid:

(i) in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment; or

(ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits a loan application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section;

(ii) one business day after the date that the owner of the homestead receives a copy of the loan application if not previously provided and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision, unless the owner on oath requests an earlier closing due to a state of emergency that:

(a) has been declared by the president of the United States or the governor as provided by law; and

(b) applies to the area where the homestead is located;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this subparagraph;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage banker or mortgage company; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) at the time the extension of credit is made, the owner of the homestead shall receive a copy of the final loan application and all executed documents signed by the owner at closing related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Subsection (a)(6) of this section;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made;

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:

(a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision;

(b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) of this subdivision, if applicable;

(c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by this section;

(d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph;

(e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; or

(f) if the failure to comply cannot be cured under Subparagraphs (x)(a)–(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of $1,000 and offering the owner the right to refinance the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and

(xi) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

(b) An owner or claimant of the property claimed as homestead may not sell or abandon the homestead without the consent of each owner and the spouse of each owner, given in such manner as may be prescribed by law.

(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.

(d) A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.

(e) A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)–(a)(5) that includes the advance of additional funds may not be secured by a valid lien against the homestead unless:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section; or

(2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section; or

(2) all of the following conditions are met:

(A) the refinance is not closed before the first anniversary of the date the extension of credit was closed;

(B) the refinanced extension of credit does not include the advance of any additional funds other than:

(i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or

(ii) actual costs and reserves required by the lender to refinance the debt;

(C) the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness

secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made; and

(D) the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed:

"YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

"HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

"IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

"(1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;

"(2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND

"(3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

"BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

"YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN."

(f–1) A lien securing a refinance of debt under Subsection (f)(2) of this section is deemed to be a lien described by Subsection (a)(4) of this section. An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2 PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) (repealed);

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH

YOU RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY PROVIDED AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS, INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

"(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

"(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

"(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST $4,000;

"(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

"(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

"(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

"(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 80 PERCENT OF THE FAIR MARKET VALUE; AND

"(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) A lender or assignee for value may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made in accordance with Subsection (a)(6)(Q)(ix) of this section if:

(1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to an extension of credit under Subsection (a)(6); and

(2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value stated in the written acknowledgment was incorrect.

(i) This subsection shall not affect or impair any right of the borrower to recover damages from the lender or assignee under applicable law for wrongful foreclosure. A purchaser for value without actual knowledge may conclusively presume that a lien securing an extension of credit described by Subsection (a)(6) of this section was a valid lien securing the extension of credit with homestead property if:

(1) the security instruments securing the extension of credit contain a disclosure that the extension of credit secured by the lien was the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(2) the purchaser acquires the title to the property pursuant to or after the foreclosure of the voluntary lien; and

(3) the purchaser is not the lender or assignee under the extension of credit.

(j) Subsection (a)(6) and Subsections (e)–(i) of this section are not severable, and none of those provisions would have been enacted without the others. If any of those provisions are held to be preempted by the laws of the United States, all of those provisions are invalid. This subsection shall not apply to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)–(i) is held to be preempted.

(k) "Reverse mortgage" means an extension of credit:

(1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner's spouse;

(2) that is made to a person who is or whose spouse is 62 years or older;

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower:

(A) based on the equity in a borrower's homestead; or

(B) for the purchase of homestead property that the borrower will occupy as a principal residence;

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;

(6) that requires no payment of principal or interest until:

(A) all borrowers have died;

(B) the homestead property securing the loan is sold or otherwise transferred;

(C) all borrowers cease occupying the homestead property for a period of longer than 12 consecutive months without prior written approval from the lender;

(C–1) if the extension of credit is used for the purchase of homestead property, the borrower fails to timely occupy the homestead property as the borrower's principal residence within a specified period after the date the extension of credit is made that is stipulated in the written agreement creating the lien on the property; or

(D) the borrower:

(i) defaults on an obligation specified in the loan documents to repair and maintain, pay taxes and assessments on, or insure the homestead property;

(ii) commits actual fraud in connection with the loan; or

(iii) fails to maintain the priority of the lender's lien on the homestead property, after the lender gives notice to the borrower, by promptly discharging any lien that has priority or may obtain priority over the lender's lien within 10 days after the date the borrower receives the notice, unless the borrower:

(a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to the lender;

(b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings so as to prevent the enforcement of the lien or forfeiture of any part of the homestead property; or

(c) secures from the holder of the lien an agreement satisfactory to the lender subordinating the lien to all amounts secured by the lender's lien on the homestead property;

(7) that provides that if the lender fails to make loan advances as required in the loan documents and if the lender fails to cure the default as required in the loan documents after notice from the borrower, the lender forfeits all principal and interest of the reverse mortgage, provided, however, that this subdivision does not apply when a governmental agency or instrumentality takes an assignment of the loan in order to cure the default;

(8) that is not made unless the prospective borrower and the spouse of the prospective borrower attest in writing that the prospective borrower and the prospective borrower's spouse received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives that was completed not earlier than the 180th day nor later than the 5th day before the date the extension of credit is closed;

(9) that is not closed before the 12th day after the date the lender provides to the prospective borrower the following written notice on a separate instrument, which the lender or originator and the borrower must sign for the notice to take effect:

"IMPORTANT NOTICE TO BORROWERS
RELATED TO YOUR REVERSE MORTGAGE

"UNDER THE TEXAS TAX CODE, CERTAIN ELDERLY PERSONS MAY DEFER THE COLLECTION OF PROPERTY TAXES ON THEIR RESIDENCE HOMESTEAD. BY RECEIVING THIS REVERSE MORTGAGE YOU MAY BE REQUIRED TO FORGO ANY PREVIOUSLY APPROVED DEFERRAL OF PROPERTY TAX COLLECTION AND YOU MAY BE REQUIRED TO PAY PROPERTY TAXES ON AN ANNUAL BASIS ON THIS PROPERTY.

"THE LENDER MAY FORECLOSE THE REVERSE MORTGAGE AND YOU MAY LOSE YOUR HOME IF:

"(A) YOU DO NOT PAY THE TAXES OR OTHER ASSESSMENTS ON THE HOME EVEN IF YOU ARE ELIGIBLE TO DEFER PAYMENT OF PROPERTY TAXES;

"(B) YOU DO NOT MAINTAIN AND PAY FOR PROPERTY INSURANCE ON THE HOME AS REQUIRED BY THE LOAN DOCUMENTS;

"(C) YOU FAIL TO MAINTAIN THE HOME IN A STATE OF GOOD CONDITION AND REPAIR;

"(D) YOU CEASE OCCUPYING THE HOME FOR A PERIOD LONGER THAN 12 CONSECUTIVE MONTHS WITHOUT THE PRIOR WRITTEN APPROVAL FROM THE LENDER OR, IF THE EXTENSION OF CREDIT IS USED FOR THE PURCHASE OF THE HOME, YOU FAIL TO TIMELY OCCUPY THE HOME AS YOUR PRINCIPAL RESIDENCE WITHIN A PERIOD OF TIME AFTER THE EXTENSION OF CREDIT IS MADE THAT IS STIPULATED IN THE WRITTEN AGREEMENT CREATING THE LIEN ON THE HOME;

"(E) YOU SELL THE HOME OR OTHERWISE TRANSFER THE HOME WITHOUT PAYING OFF THE LOAN;

"(F) ALL BORROWERS HAVE DIED AND THE LOAN IS NOT REPAID;

"(G) YOU COMMIT ACTUAL FRAUD IN CONNECTION WITH THE LOAN; OR

"(H) YOU FAIL TO MAINTAIN THE PRIORITY OF THE LENDER'S LIEN ON THE HOME, AFTER THE LENDER GIVES NOTICE TO YOU, BY PROMPTLY DISCHARGING ANY LIEN THAT HAS PRIORITY OR MAY OBTAIN PRIORITY OVER THE LENDER'S LIEN WITHIN 10 DAYS AFTER THE DATE YOU RECEIVE THE NOTICE, UNLESS YOU:

"(1) AGREE IN WRITING TO THE PAYMENT OF THE OBLIGATION SECURED BY THE LIEN IN A MANNER ACCEPTABLE TO THE LENDER;

"(2) CONTEST IN GOOD FAITH THE LIEN BY, OR DEFEND AGAINST ENFORCEMENT OF THE LIEN IN, LEGAL PROCEEDINGS SO AS TO PREVENT THE ENFORCEMENT OF THE LIEN OR FORFEITURE OF ANY PART OF THE HOME; OR

"(3) SECURE FROM THE HOLDER OF THE LIEN AN AGREEMENT SATISFACTORY TO THE LENDER SUBORDINATING THE LIEN TO ALL AMOUNTS SECURED BY THE LENDER'S LIEN ON THE HOME.

"IF A GROUND FOR FORECLOSURE EXISTS, THE LENDER MAY NOT COMMENCE FORECLOSURE UNTIL THE LENDER GIVES YOU WRITTEN NOTICE BY MAIL THAT A GROUND FOR FORECLOSURE EXISTS AND GIVES YOU AN OPPORTUNITY TO REMEDY THE CONDITION CREATING THE GROUND FOR FORECLOSURE OR TO PAY THE REVERSE MORTGAGE DEBT WITHIN THE TIME PERMITTED BY SECTION 50(k)(10), ARTICLE XVI, OF THE TEXAS CONSTITUTION. THE LENDER MUST OBTAIN A COURT ORDER FOR FORECLOSURE EXCEPT THAT A COURT ORDER IS NOT REQUIRED IF THE FORECLOSURE OCCURS BECAUSE:

"(1) ALL BORROWERS HAVE DIED; OR

"(2) THE HOMESTEAD PROPERTY SECURING THE LOAN IS SOLD OR OTHERWISE TRANSFERRED."

"YOU SHOULD CONSULT WITH YOUR HOME COUNSELOR OR AN ATTORNEY IF YOU HAVE ANY CONCERNS ABOUT THESE OBLIGATIONS BEFORE YOU CLOSE YOUR REVERSE MORTGAGE LOAN. TO LOCATE AN ATTORNEY IN YOUR AREA, YOU MAY WISH TO CONTACT THE STATE BAR OF TEXAS."

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED IN PART BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE.";

(10) that does not permit the lender to commence foreclosure until the lender gives notice to the borrower, in the manner provided for a notice by mail related to the foreclosure of liens under Subsection (a)(6) of this section, that a ground for foreclosure exists and gives the borrower at least 30 days, or at least 20 days in the event of a default under Subdivision (6)(D)(iii) of this subsection, to:

(A) remedy the condition creating the ground for foreclosure;

(B) pay the debt secured by the homestead property from proceeds of the sale of the homestead property by the borrower or from any other sources; or

(C) convey the homestead property to the lender by a deed in lieu of foreclosure; and

(11) that is secured by a lien that may be foreclosed upon only by a court order, if the foreclosure is for a ground other than a ground stated by Subdivision (6)(A) or (B) of this subsection.

(l) Advances made under a reverse mortgage and interest on those advances have priority over a lien filed for record in the real property records in the county where the homestead property is located after the reverse mortgage is filed for record in the real property records of that county.

(m) A reverse mortgage may provide for an interest rate that is fixed or adjustable and may also provide for interest that is contingent on appreciation in the fair market value of the homestead property. Although payment of principal or interest shall not be required under a reverse mortgage until the entire loan becomes due and payable, interest may accrue and be compounded during the term of the loan as provided by the reverse mortgage loan agreement.

(n) A reverse mortgage that is secured by a valid lien against homestead property may be made or acquired without regard to the following provisions of any other law of this state:

(1) a limitation on the purpose and use of future advances or other mortgage proceeds;

(2) a limitation on future advances to a term of years or a limitation on the term of open-end account advances;

(3) a limitation on the term during which future advances take priority over intervening advances;

(4) a requirement that a maximum loan amount be stated in the reverse mortgage loan documents;

(5) a prohibition on balloon payments;

(6) a prohibition on compound interest and interest on interest;

(7) a prohibition on contracting for, charging, or receiving any rate of interest authorized by any law of this state authorizing a lender to contract for a rate of interest; and

(8) a requirement that a percentage of the reverse mortgage proceeds be advanced before the assignment of the reverse mortgage.

(o) For the purposes of determining eligibility under any statute relating to payments, allowances, benefits, or services provided on a means-tested basis by this state, including supplemental security income, low-income energy assistance, property tax relief, medical assistance, and general assistance:

(1) reverse mortgage loan advances made to a borrower are considered proceeds from a loan and not income; and

(2) undisbursed funds under a reverse mortgage loan are considered equity in a borrower's home and not proceeds from a loan.

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made according to the terms established by the loan documents by one or more of the following methods:

(1) an initial advance at any time and future advances at regular intervals;

(2) an initial advance at any time and future advances at regular intervals in which the amounts advanced may be reduced, for one or more advances, at the request of the borrower;

(3) an initial advance at any time and future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached;

(4) an initial advance at any time, future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached, and subsequent advances at times and in amounts requested by the borrower according to the terms established by the loan documents to the extent that the outstanding balance is repaid; or

(5) at any time by the lender, on behalf of the borrower, if the borrower fails to timely pay any of the following that the borrower is obligated to pay under the loan documents to the extent necessary to protect the lender's interest in or the value of the homestead property:

(A) taxes;

(B) insurance;

(C) costs of repairs or maintenance performed by a person or company that is not an employee of the lender or a person or company that directly or indirectly controls, is controlled by, or is under common control with the lender;

(D) assessments levied against the homestead property; and

(E) any lien that has, or may obtain, priority over the lender's lien as it is established in the loan documents.

(q) To the extent that any statutes of this state, including without limitation, Section 41.001 of the Texas Property Code, purport to limit encumbrances that may properly be fixed on homestead property in a manner that does not permit encumbrances for extensions of credit described in Subsection (a)(6) or (a)(7) of this section, the same shall be superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment.

(r) The supreme court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a)(6) of this section and to foreclosure of a reverse mortgage lien that requires a court order.

(s) The Finance Commission of Texas shall appoint a director to conduct research on the availability, quality, and prices of financial services and research the practices of business entities in the state that provide financial services under this section. The director shall collect information and produce reports on lending activity of those making loans under this section. The director shall report his or her findings to the legislature not later than December 1 of each year.

(t) A home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which:

(1) the owner requests advances, repays money, and reborrows money;

(2) any single debit or advance is not less than $4,000;

(3) the owner does not use a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower, to obtain an advance;

(4) any fees described by Subsection (a)(6)(E) of this section are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance;

(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;

(6) (repealed);

(7) the lender or holder may not unilaterally amend the extension of credit; and

(8) repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and:

(A) during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and

(B) after the period during which the owner may request advances, installments are substantially equal.

(u) The legislature may by statute delegate one or more state agencies the power to interpret Subsections (a)(5)–(a)(7), (e)–(p), and (t), of this section. An act or omission does not violate a provision included in those subsections if the act or omission conforms to an interpretation of the provision that is:

(1) in effect at the time of the act or omission; and

(2) made by a state agency to which the power of interpretation is delegated as provided by this subsection or by an appellate court of this state or the United States.

(v) A reverse mortgage must provide that:

(1) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;

(2) after the time the extension of credit is established, no transaction fee is charged or collected solely in connection with any debit or advance; and

(3) the lender or holder may not unilaterally amend the extension of credit.

Amended Nov. 6, 1973, and Nov. 7, 1995; Subsecs. (a)–(d) amended and (e)–(s) added Nov. 4, 1997; Subsecs. (k), (p), and (r) amended Nov. 2, 1999; Subsec. (a) amended Nov. 6, 2001; Subsecs. (a), (f), and (g) amended and (t) and (u) added Sept. 13, 2003; Subsec. (p) amended and (v) added Nov. 8, 2005; Subsecs. (a), (g), and (t) amended Nov. 6, 2007; Subsec. (k) amended Nov. 5, 2013; Subsecs. (a), (f), (g), and (t) amended and (f–1) added Jan. 1, 2018.

Sec. 51. SIZE OF HOMESTEAD; USES; RELEASE OR REFINANCE OF EXISTING LIEN

The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or contiguous lots amounting to not more than 10 acres of land, together with any improvements on the land; provided, that the homestead in a city, town or village shall be used for the purposes of a home, or as both an urban home and a place to exercise a calling or business, of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired; provided further that a release or refinance of an existing lien against a homestead as to a part of the homestead does not create an additional burden on the part of the homestead property that is unreleased or subject to the refinance, and a new lien is not invalid only for that reason.

Amended Nov. 3, 1970, Nov. 6, 1973, Nov. 8, 1983, and Nov. 2, 1999.

Sec. 52. DESCENT AND DISTRIBUTION OF HOMESTEAD; RESTRICTIONS ON PARTITION

On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

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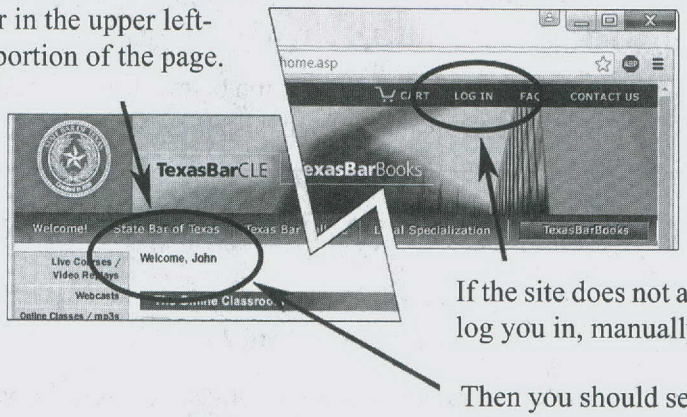

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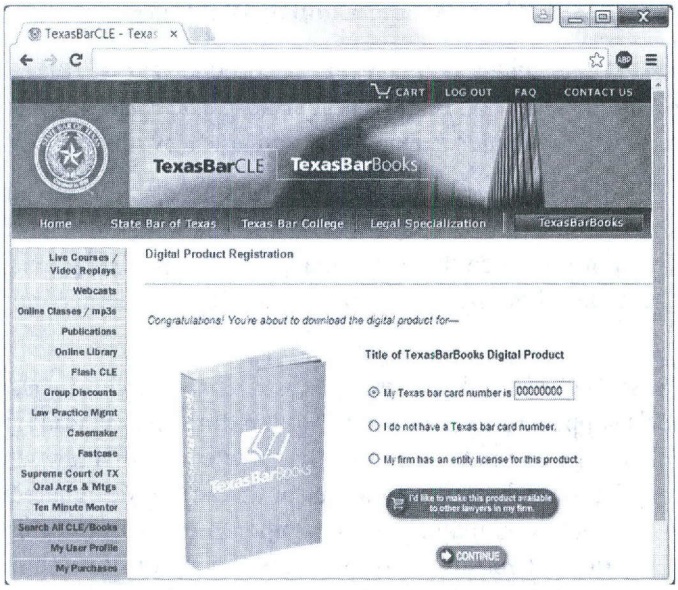

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