



# Child Protection Legislative Update: 85th Legislative Session

Texas Supreme Court Children's  
Commission

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SUPREME COURT OF TEXAS PERMANENT JUDICIAL  
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES



# Senate Bill 11

## Effective 9/01/17

### Abuse and Neglect Definitions Amended Section 261.001, Texas Family Code

- Amends “abuse” to include “forcing or coercing a child to enter into a marriage”
- Adds “exploitation,” which means the illegal or improper use of a child or child’s resources for monetary or personal benefit or profit by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy
- Amends “neglect” to include an 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 serviced by the facility or program

# House Bill 3052

## Effective 9/01/17

### Pleading Requirement: Protective Order Sections 102.008(b) and Section 160.6035, Family Code

- SAPCR petition must:
  - include a statement as to whether there is protective order in effect or an application pending under Title 4, Family Code, Chapter 7A, Code of Criminal Procedure, or an order for emergency protection under Article 17.292, Code of Criminal Procedure
  - attach a copy of each order in effect, if a party to the suit or a child of a party was the applicant or victim of the conduct alleged in the application, and the other party was the respondent or defendant
- If a copy of an order in effect is not available at the time of filing of the petition, the petition must state that a copy of the order will be filed with the court before any hearing
- Title IV-D agency (OAG) exempted from these requirements

# Senate Bill 999

## Effective 9/01/17

### Filing Petition After Taking Possession Section 262.105

- Clarifies that the petition filed after taking possession of a child in an emergency pursuant to Section 262.104 (Removal without Court Order) must be supported by an affidavit that comports with the same conditions and circumstances required in cases where the Department takes possession of a child in an emergency under Section 262.101 (Emergency Removal with a Court Order)
- Provides that an affidavit supporting a petition filed after taking possession of a child in an emergency without a court order must state facts related to reasonable efforts that were made to avoid removal

# House Bill 7

## Effective 9/01/17

### New Powers and Duties of the Guardian ad Litem (GAL) Section 107.002(b) and (c)

- Shall interview educators and child welfare service providers
- GAL entitled to:
  - have access to a child in the child's placement
  - be consulted and provide comments regarding the child's placement
  - receive notification and attend meetings related to the child's service plan
  - attend court-ordered mediation regarding the child's case
- Evaluate whether the child welfare service providers serving children are protecting the child's best interests regarding their care, treatment, services, and all other rights listed in Section 263.008 (Foster Youth Bill of Rights)

# House Bill 7

## Effective 9/01/17

### New Duties of the Child's Attorney; Continued Representation Sections 107.003(b), 107.004(d-3), 107.016

- A child's attorney now has an additional duty to review the child's safety and well-being, including any effects of the trauma to the child, and take appropriate action, including requesting a review hearing when necessary to address an issue of concern.
- Statute is now clear that court can retain the attorney on the child's case as long as the child is in the Department's managing conservatorship.

# Senate Bill 999, Effective 9/01/17

## Section 262.107(a), Standard for Decision

- Requires evidence that one of four circumstances exist when a child has been removed without a court order under Section 262.104 (Removal without a Court Order). If the child was removed due to an immediate danger, that there is a continuing danger if the child is returned, the child has been a victim of sexual abuse or trafficking or there is a substantial risk that the child will be the victim of sexual abuse or trafficking in the future, the person entitled to possession is currently using a controlled substance that constitutes an immediate danger to the physical health or safety of the child, or the person entitled to possession permitted the child to remain on premises used for the manufacture of methamphetamine.

## Section 262.1131, New Temporary Restraining Order

- Authorizes the court to render a Temporary Restraining Order (TRO) as provided by Section 105.001 when the Department files suit under Section 262.113.

# Senate Bill 11

## Effective 9/01/17

### Medical Care for Child Section 264.1076

- Any child taken into conservatorship shall receive necessary emergency medical care as soon as possible.
- For children who remain in the conservatorship for more than three business days, they must receive an initial medical examination by the end of the third business day after the child is removed from the child's home if the child is removed because of sexual abuse, physical abuse or another obvious physical injury to the child, or if the child has a chronic medical condition, is medically fragile or has a diagnosed mental illness.
- A physician or health care provider cannot administer a vaccination without parental consent except for a tetanus vaccination, and only if the physician or other health care provider determines that an emergency requires a vaccination.
- The prohibition of vaccinations does not apply once the Department is named the child's managing conservator at the Adversary Hearing.

# House Bill 7 and SB 11

## Effective 9/01/17



### Voluntary Temporary Managing Conservatorship (HB 7) Section 262.013

- Voluntary agreement to TMC does not equal an admission by the parent that the parent engaged in conduct that endangered the child

### Filing Requirement (SB 11) Section 262.013

- Each suit 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

# Senate Bill 999, Effective 9/01/17

## Section 262.201(a-5) or (e-1), Extension

- Allows a parent who is not indigent an extension of up to seven days to allow the parent to hire an attorney or to allow the parent's retained attorney time to respond to the petition and prepare for the hearing. An extension under this section is subject to the same restrictions of subsection (a-3) requiring the court to extend any temporary order, TRO or order of attachment issued under Section 262.102(a) until the date of the rescheduled full adversary hearing.

# House Bill 7

## Effective 9/01/17

### Disclosure of Certain Evidence Section 262.014

- *At the request of an attorney*, the Department will be required, before the adversary hearing, to provide:
  - the name of any person the Department intends to call as a witness to the allegations (except a Department employee)
  - a copy of any offense report relating to the allegations contained in the petition that will be used to refresh a witness's memory
  - a copy of any photo, video or recording that will be presented as evidence

# House Bill 7

## Effective 9/01/17

### Limits on Removal Section 262.116

- Department shall not take possession of a child based on evidence that the parent:
  - homeschooled the child
  - is economically disadvantaged
  - has been charged with a nonviolent misdemeanor (other than one listed in Title 5 (Offenses Against the Person) or Title 6 (Offenses Against the Family) of the Penal Code, or involves family violence as defined by Section 71.004 of the Family Code)
  - provided or administered low-THC cannabis and that was prescribed for the child
  - declined immunization for a child for reasons of conscience, including religious belief

# House Bill 7

## Effective 9/01/17

### Limits on Removal (Cont'd) Section 262.116

- Does not prohibit the Department from gathering or offering evidence of the actions described as part of an action to take possession of a child
- Requires the Department to train its caseworkers regarding the prohibitions on removal provided under this section

# Senate Bill 999

## Effective 9/01/17

### Full Adversary Hearing Section 262.201

- Streamlines Chapter 262 and the Adversary Hearing process to bring all hearings held subsequent to an emergency removal and hearings on non-emergencies under one section
- Sets a deadline of 30 days for a court to hear a non-emergency petition filed pursuant to Section 262.113

# Senate Bill 999

## Effective 9/01/17

### Full Adversary Hearing (Cont'd) Section 262.201

- Adds subsection (j), applicable to petitions filed pursuant to Section 262.113 (non-emergency petition) to require a finding of sufficient evidence to satisfy a person of ordinary prudence and caution:
  - *there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person entitled to possession and continuation in the home would be contrary to the child's welfare, and*
  - that reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need to remove the child

# Senate Bill 999

## Effective 9/01/17

### Full Adversary Hearing (Cont'd) Section 262.201

- HB 7 also amends pleading requirements of Section 262.113
- No change the standard of proof
  - All findings must based on the “sufficient to satisfy a person of ordinary prudence and caution” standard
  - Findings for non-emergency removal on par with the findings required to affirm a removal in an emergency
- Repeals Section 262.205
- Re-letters several subsections but content remains the same



# Senate Bill 999

## Effective 9/01/17

### Transfer of Suit Section 262.203

- Requires a court, on the motion of a party or on the court's own motion, to transfer a suit to a court of continuing jurisdiction *if necessary for the convenience of the parties and in the best interest of the child*
- Alternatively, the court may order transfer of the suit from the CCJ

### Mandatory Transfer Section 155.201

- Requires that upon receiving notice that a court exercising emergency jurisdiction under Chapter 262 has ordered the transfer of a suit under Section 262.203(a)(2), the court of continuing jurisdiction (CCJ) *must* transfer the proceedings to the court exercising jurisdiction under Chapter 262

# Senate Bill 999

## Effective 9/01/17

### Procedure for Transfer Section 155.204

- Requires the Department to file a transfer order issued under 262.203(a)(2) with the clerk of the CCJ so that the clerk of the CCJ can, within the time required by Section 155.207(a), transfer the case to the court exercising jurisdiction under Chapter 262
- Transfer provisions also in HB 7 and SB 738
- SB 999 provisions control

# House Bill 7

## Effective 9/01/17

### Notice of Hearings; Presentation of Evidence Section 263.0021(e) and (f)

- Requires that notice of a hearings conducted under Chapter 263 (Status Hearing, Permanency Reviews) state that individuals entitled to notice may, but are not required to, attend and be heard
- Requires the Court to:
  - determine whether the child's caregiver is present at the hearing
  - allow the caregiver to testify if the caregiver wishes to provide information about the child

# House Bill 1542

## Effective 9/01/17

### Section 264.107, Placement of Children

- Requires the Department to consider whether a placement is in the child's best interest
- Department shall consider whether the placement is:
  - the least restrictive setting for the child
  - in closest geographic proximity to the child's home
  - most able to meet the identified needs of the child, and
  - satisfies any expressed interests of the child relating to placement, when developmentally appropriate.

# House Bill 7

## Effective 9/01/17

### Review of Placement; Findings Section 262.0022 Section 263.002

- Requires Court at each placement review hearing under Chapter 262 and 263 to:
  - review the placement of each child in TMC or PMC who is not placed with a relative caregiver or designated caregiver
  - make a finding as to whether the Department is able to place the child with a relative or other designated caregiver
  - make findings whether 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

# Senate Bill 1758, Effective 9/01/17

## Sections 107.002(b-1) and 107.003(b)

- GAL and the AAL are responsible for ascertaining whether the child has received a copy of the child's birth certificate, social security card, driver's license or personal ID card, and other personal documents the Department determines is appropriate.
  - Also required by SB11.

# House Bill 7

## Effective 9/01/17

### Health Care Consultation Section 266.005

- Requires a Court to note on the record when the Court declines to follow the recommendation of a health care professional who has been consulted regarding a health care service, procedure, or treatment for a child in conservatorship of the Department

# Senate Bill 1220, Effective 9/01/17

## Section 25.007(b), Education Code, Transition Assistance

- Requires Texas Education Agency (TEA) to develop procedures to ensure that when a homeless youth or foster youth transfers to a new school, the new school relies on decisions made by the previous school regarding placement in courses or educational programs and places the student in comparable courses or educational programs at the new school, if those courses or programs are available.
- In addition to accepting a referral for special education evaluation, school districts, campuses, and open-enrollment charter schools must provide comparable services during the referral process or until the new school develops an individualized education program (IEP) for the student.

# House Bill 7

## Effective 9/01/17

### Admission of Child for Inpatient Mental Health Chapter 572, Health & Safety Code

- The Department is prohibited from admitting to an inpatient mental health facility a minor in DFPS conservatorship unless:
  - a physician states that the minor is a person with a mental illness or demonstrates symptoms of a serious emotional disorder, **and**
  - presents a risk of serious harm to self or others if not immediately restrained or hospitalized

# House Bill 7

## Effective 9/01/17

### Admission of Child for Inpatient Mental Health (Cont'd) Chapter 572, Health & Safety Code

- Admission to an inpatient mental health facility is a significant event for purposes of Section 264.018, Texas Family Code
  - Requires notice to all parties entitled to notice under that section, and to the court of continuing jurisdiction, within three business days from the admission
- Department is required to periodically review the need for continued inpatient treatment
- If the Department determines there is no longer a need, the Department must notify the facility administrator that the minor may no longer be detained unless an application for court-ordered mental health services is filed

# Senate Bill 495

## Effective 9/01/17

### History of Domestic Violence or Sexual Assault Section 153.004

- The rebuttable presumption in Section 153.004 is expanded to persons other than the parent
- 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, abuse or family violence by:
  - that parent *or*
  - *any person who resides in the parent's house or who is permitted by that parent to have unsupervised access to a child during that parent's periods of possession of or access to the child.*



# House Bill 7

## Effective 9/01/17

### Automatic Dismissal Without Court Order Section 263.401(a), (b), (b-1) Section 263.402(b) Repealed

- Court jurisdiction *automatically* terminates *without a court order* unless the court has commenced the trial on the merits or granted an extension under Section 263.401(b) or (b-1) by the original dismissal date
- The court must provide notice of the automatic dismissal date at least 60 days before the dismissal date
- Section 263.402(b) repealed - motion to dismiss is no longer required because dismissal is automatic

# House Bill 7

## Effective 9/01/17

### Transition Monitored Return Section 263.403(a) (2) (B)

- Allows a court to order a transition of the child to the child's parents on a return and monitor while a parent completes requirements imposed under a service plan *and specified in the temporary order*.
- Designed to allow a gradual return of the child to their parent's home under a monitored return before a parent has completed all requirements of the service plan.

### Section 263.403 (a-1)

- Unless a court has already granted an extension under Section 263.401(b), the Department or the parent may request an additional six months under Section 263.403 (a-1) to complete any remaining requirements of the service plan *specified in the temporary order* that are mandatory for the return of the child.

# House Bill 7

## Effective 9/01/17

### Transition Monitored Return (Cont'd) Section 263.403(c)

- If the court must terminate the monitored return or the transition plan order, the court must set the matter for dismissal no later than six months from the date terminating the transition order or the date the child is moved.

If the court has **not** granted an extension of the 12 month deadline under 263.401 (b):

The court can order a Regular Monitored Return under Section 263.403(a)(2)(A).

The Family Code does not authorize any type of extension associated with a Monitored Return ordered pursuant to Section 263.403(a)(2)(A). Per Section 263.403(b), the court must schedule a new dismissal date not later than the 180<sup>th</sup> day after the court enters the order unless the court commences a trial on the merits.

The court can order a Transition Monitored Return under 263.403 (a)(2)(B).

Extends 180 days per Section 263.403(b)

Under new Section 263.403(a-1), the Court can order an **additional** six months for the parent to complete the services requirements *specified in the temporary order* during a Transition Monitored Return granted pursuant to Section 263.403(a)(2)(B), but only if no extension under Section 263.401 was already granted.



**After an extension period has  
been granted pursuant to  
263.401(b):**

**The court can order a Regular  
Monitored Return under either  
Section 263.403(a)(2)(A). OR**

**The court can order a  
Transition Monitored Return  
under 263.403(a)(2)(B),**

***But the additional six  
months of 263.403 (a-1) is  
not available.***

# HB 1410

## Effective 9/01/17

### Standing of Foster Parent to Intervene Section 102.004(b) and (b-1)

- A foster parent may only be granted leave to intervene under Section 102.004(b) if the foster parent would have standing to file an original suit as provided by Section 102.003(a)(12).
  - Section 102.003(a)(12) requires child placed in home at least 12 months ending not more than 90 days preceding the date of the filing of the petition.
- Bill applies only to an original suit affecting the parent-child relationship filed on or after September 1, 2017.

# Senate Bill 495

## Effective 9/01/17

### Alternate Dispute Resolution Section 153.0071(e-1)

- Provides an additional basis for a court to decline to enter a judgment on MSA if the agreement would permit a person who must register as a sex offender under Chapter 62 of the Code of Criminal Procedure or otherwise has a history or pattern of physical or sexual abuse directed against any person to reside in the same household as the child or otherwise have unsupervised access to the child.

# House Bill 7

## Effective 9/01/17

### Involuntary Termination of the Parent-Child Relationship Section 161.001(c) and (e)

- Prohibits courts from making findings and ordering termination based on evidence the parent:
  - homeschooled the child
  - is economically disadvantaged
  - has been charged with a nonviolent misdemeanor (other than one listed in Title 5 (Offenses Against the Person) or Title 6 (Offenses Against the Family) of the Penal Code, or involves family violence as defined by Section 71.004 of the Family Code)
  - provided or administered low-THC cannabis and that was prescribed for the child
- Authorizes the Department to offer evidence of the actions described in Section 161.001(c) as part of an action to terminate the parent-child relationship

# House Bill 7

## Effective 9/01/17

### “O” Grounds Section 161.001(d)

- Prohibits courts from ordering termination on “O” grounds if a parent proves by preponderance of the evidence that:
  - the parent was unable to comply with specific provisions of the court order
  - the parent made a good faith effort to comply with the order
  - failure to comply is not attributable to any fault of the parent

### Order Terminating Parental Rights Section 161.206 (a-1)

- Restricts courts from terminating the parental rights of a parent unless the court finds by clear and convincing evidence grounds for termination for that parent.

# House Bill 7

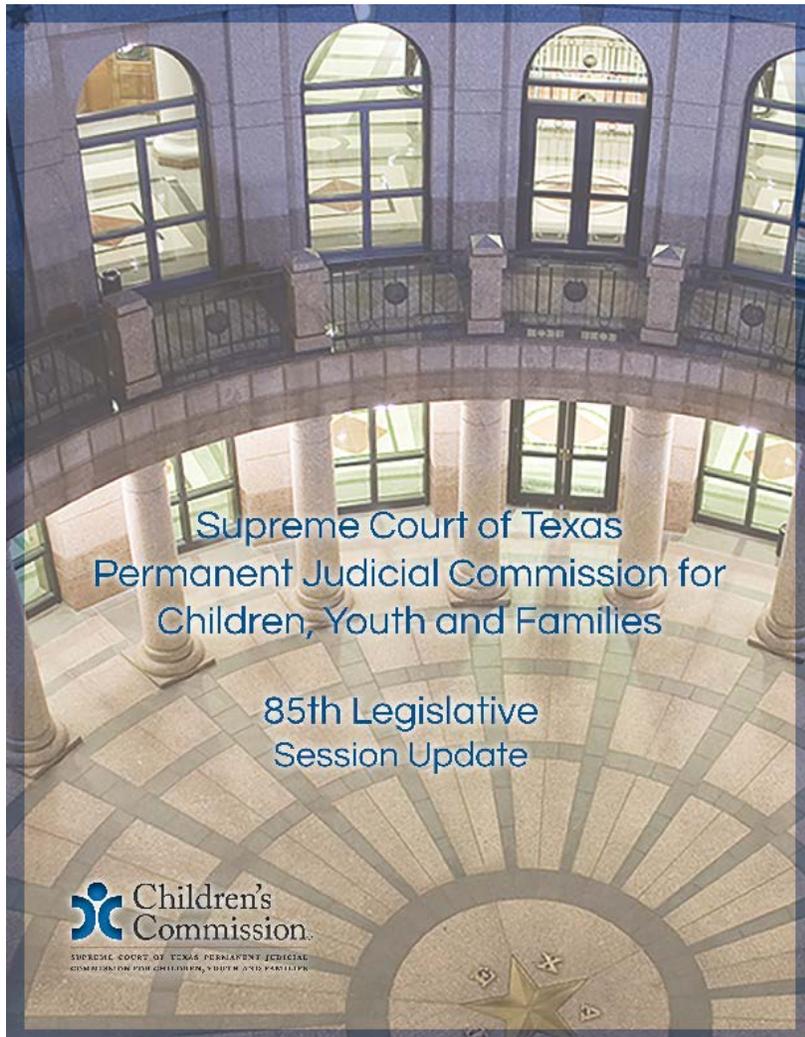
## Effective 9/01/17

### Permanency Review After Final Order Section 263.5031

- Requires the judge to determine whether the Department has placed the child with a relative or other designated caregiver, as opposed to a foster home or non-relative caregiver placement



# 85<sup>th</sup> Legislative Session Update



<http://texaschildrenscommission.gov/media/83450/85th-session-legislative-update-july-21-final.pdf>

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