

Agency Cost Estimate
Department of Family and Protective Services (DFPS)
85th Legislative Session

Bill: SB0999 **Version:** 2nd House Passing (AMEND 1-3)
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Topic or Caption: Relating to procedures for taking possession of a child and for certain hearings in a suit affecting the parent-child relationship involving the Department of Family and Protective Services.

Amendment 1 results in anticipated fiscal implications.

Summary of Fiscal Implications:

Fiscal Year	Probable Cost to GR	Probable Cost to Federal Funds	Probable Savings to GR	Probable Savings to Federal Funds	Probable REVENUE Gain/(Loss) to xxx	Change in FTEs
2018	\$ 6,805,166	\$ 754,653	\$ -	\$ -	\$ -	73.1
2019	\$ 6,279,883	\$ 697,269	\$ -	\$ -	\$ -	73.1
2020	\$ 6,279,883	\$ 697,269	\$ -	\$ -	\$ -	73.1
2021	\$ 6,279,883	\$ 697,269	\$ -	\$ -	\$ -	73.1
2022	\$ 6,279,883	\$ 697,269	\$ -	\$ -	\$ -	73.1
Total ALL YRS	\$ 31,924,698	\$ 3,543,729	\$ -	\$ -	\$ -	
GR FY 18-19 (Cost)		\$ 13,085,049		AF FY 18-19 (Cost)		\$ 14,536,971
GR FY 18-19 (Savings)		\$ -		AF FY 18-19 (Savings)		\$ -
FTEs FY 18		73.1		FTEs FY 19		73.1
GR FY18-19 w/out Fringe		\$ 11,045,726		AF FY18-19 w/out Fringe		\$ 12,270,054
Net Impact GR FY 18-22		\$ 31,924,698		Net Impact AF FY 18-22		\$ 35,468,427

I. Bill Summary / Fiscal Analysis

SECTION 1. This section amends Section 262.101, Family Code, states that 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:

- 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
- continuation in the home would be contrary to the child s welfare
- there is no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter 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.

This section restates subsection (1) into two separate subsections and re-numerates remaining subsections. There is no fiscal impact.

SECTION 2. This section amends Section 262.1015 (d), Family Code to state a temporary restraining order under this section expires not later than the 14th day after the date the order was rendered unless an extension is granted under Section 262.201 (e).

This section replaces Section 262.201(a-3) with 262.201(e). There is no fiscal impact.

SECTION 3. This section amends Section 262.102 (a), Family Code, makes a non-substantive change of the necessary findings a court must make to enter an ex parte order authorizing removal of a child and renumbers the Subsections.

This section restates subsection (1) into two separate subsections and re-numerates remaining subsections. There is no fiscal impact.

SECTION 4. This section amends Section 262.103, Family Code, states that 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).

This section replaces Section 262.201(a-3) with 262.201(e). There is no fiscal impact.

SECTION 5. This section amends Section 262.105, Family Code, when a child is taken into possession without a court order, the person taking the child into possession, without unnecessary delay, shall file suit affecting the parent-child relationship; **request the court to appoint an attorney ad litem for the child;** and request an initial hearing to be held by no later than the first business day after the date the child is taken into possession. 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 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, and the use constituted an immediate danger to the child; (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 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 were made to

prevent or eliminate the need for removal of the child.

Floor amendment #3 adds the requirement for a person taking a child into possession in emergency to request the court to appoint an attorney ad litem for the child. There is no fiscal impact.

SECTION 6. This section amends Sections 262.106 (a) and (d), Family Code, states that 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.

This section replaces “working” day to “business” day. There is no fiscal impact.

SECTION 7. This section amends Section 262.107 (a), Family code, by expanding the authority of the court at the initial hearing following the removal of a child without a court order, to allow continued possession of a child by DFPS:

- when the parent is currently using a controlled substance, if the use constitutes an immediate danger to the physical health or safety of a child,
- when that parent or person allowed the child to remain on premises used for the manufacture of methamphetamine.

There is no fiscal impact.

SECTION 8. This section amends Section 262.109 (b), Family Code, states that 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.

This section replaces “working” day to “business” day. There is no fiscal impact.

SECTION 9. This section amends Subchapter B, Chapter 262, Family Code by adding Section 262.1131 which states the court, in a suit filed under Section 262.113, may render a temporary restraining order as provided by Section 105.001.

There is no fiscal impact.

SECTION 10. This section amends Section 262.201, Family Code, by:

- amending language in Subsection (a) to state “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 dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by a governmental entity, unless the court grants an extension under Subsection (e) or (e-1).
- adding a new Subsection (b) which states 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.

- renumbering Subsection (a-1) to (c), (a-2) to (d), (a-3) to (e), (a-4) to (f), (e) to (n), (f) to (o), and (g) to (p).
- adding a new Subsection (e-1) which states a parent who is not indigent appears in opposition to the suit, the court may 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. The postponement under this subsection is subject to the limits and requirements prescribed in Subsection (e).
- amending language in Subsection (g) to state "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 that there was danger to the physical health or safety of the child.
- amending language in Subsection (h) to state "in a suit filed under Section 262.101 or 262.105", if the court finds sufficient evidence that there is a continuing danger to the physical health or safety of the child, the court shall issue an appropriate temporary order under Chapter 105.
- adding a new Subsection (i) which states a court, in considering whether there is continuing danger to the child under Subsection (g), may consider whether the household to which the child would be returned includes a person who has abused or neglected another child in a manner that caused serious injury to or the death of the other child, or has sexually abused another child.
- adding a new Subsection (j) which states in 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 that there is a continuing danger to the child and reasonable efforts were made to prevent or eliminate the need for the removal of the child.
- adding a new Subsection (k) which states if a 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.
- amending language in Subsection (m) by deleting section now referenced in Subsection (i) and (k).

There is no fiscal impact.

SECTION 11. This section repeals Section 262.205, Family Code.

SECTION 12. This section (Amendment 1) adds a new SECTION to amend Section 161.101, which amends Subsection (a) and adds new Subsections (b) – (e).

Subsection (a) is amended by adding language referring to new Subsection (b).

Subsection (b) states in a suit filed by DFPS requesting termination of the parent-child relationship, DFPS may plead for termination against a parent only if

DFPS includes an affidavit supporting the petition that states facts sufficient to plead the ground for termination alleged in the petition against that parent. DFPS may not plead for termination against another parent unless the affidavit also states facts sufficient to plead against that parent.

Subsection (c) states if DFPS, after filing suit, discovers additional facts sufficient to support pleading a ground for termination against a parent who was not named in the original petition, DFPS may amend or supplement its pleading to allege a ground for termination against the parent. The amended or supplemental pleading must be supported by an affidavit that complies with the requirements of Subsection (b).

Subsection (d) states on filing an amended or supplemental pleading under Subsection (c), the court must conduct a hearing under Section 262.201 not later than the 14th day after the date the amended or supplemental pleading is filed.

Subsection (e) states DFPS must join any party whose joinder is required under Rule 39, Texas Rules of Civil Procedure.

SECTION 13. This section:

- (1) amends Section 155.201 by adding Subsection (d), which states 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, pursuant to the requirements of Section 155.204 (i), transfer the proceedings to the court in which the suit under Chapter 261 is pending, within the time required by Subsection 155.207 (a).**
- (2) amends Section 155.204 (i) by amending language to state DFPS must 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, the clerk of the court must transfer the files as provided by this subchapter within the time required by Subsection 155.207 (a).**
- (3) amends Section 262.203 (a) to state the court that rendered the temporary order shall, in accordance with procedures provided by Chapter 155, transfer the suit to the court of continuing, exclusive jurisdiction, if any, within the time required by Subsection 155.207 (a), if the court finds that the transfer is necessary for the convenience of the parties, and in the best interest of the child.**
- (4) amends Chapter 262 by adding Section 262.012 which states for allegations of abuse or neglect arising from the same incident or occurrence, DFPS shall file petitions for the protection of children in the same home, in the same court.**

There is no fiscal impact.

SECTION 14. The changes in law made by this Act apply only to a suit affecting the parent-child relationship that is filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect on the date the suit is filed, and the former law is continued in effect for that purpose.

SECTION 15. This Act takes effect September 1, 2017.

II. Methodology/Assumptions

There are no fiscal implications for the floor amendments that revise SECTION 5 and add SECTIONS 13. NEW SECTION 12 has fiscal impact.

SECTION 12

This section will allow DFPS to plead a ground for termination or amend or supplement its pleading to allege a ground for termination against a parent only if DFPS includes an affidavit supporting the petition that states facts sufficient to plead the ground for termination alleged in the petition against that parent. DFPS assumes to amend approximately 75 percent of suits.

Pleadings for grounds for termination against a parent:

Projected suits = $20,249 \times 75\% = 15,187$ affidavits required for amended pleadings

$15,187 \times 2$ hours per affidavit = 30,374 hours needed per year/12 months = 2,531 hours needed per month

$2,531$ hours/129 hours available per month = 19.6 CVS caseworkers and 19.6 Attorneys plus ratio driven needed

DFPS assumes 30 percent of suits would require an additional hearing as required under Subsection (d) for discovery of additional facts sufficient to support an amended or supplemental pleading a ground for termination against a parent who was not named in the original petition.

Amended or Supplemented pleadings with additional hearing:

Projected suits = $20,249 \times 30\% = 6,075$ estimated additional hearings

$6,075$ estimated additional hearings $\times 2$ hours per additional hearing = 12,149 hours needed per year/12 months = 1,012 hours needed per month

$1,012$ hours/129 hours available per month = 7.7 CVS caseworkers and 7.7 Attorneys plus ratio driven staff needed

The total all funds cost for SECTION 12 (including salaries, overhead costs, travel, basic consumable supplies, technology costs and employee benefits) is estimated at:

\$7,559,819 in FY 2018 and \$6,977,152 in each year in FY 2019 through FY 2022.

The FTE-related technology cost is estimated at \$88,002 in each year in FY 2018 through FY 2022.

III. Fiscal Impact

The fiscal impact is estimated to have a cost of \$13,085,049 in General Revenue and

\$14,536,971 in All Funds for the biennium. The estimated five year cost is \$31,924,698 to General Revenue and \$35,468,427 in All Funds.

IV. Technology Impact

The total technology cost is estimated to be \$88,002 each year in FY 2018 through FY 2022 for seat management services, software licenses, and basis data storage under the contract for data center services.

Capital budget authority is estimated at \$176,004 for the biennium.

V. Local Government

DFPS assumes there is no fiscal impact to local government entities as a result of implementing the Amendment.

