

TALKING POINTS AGAINST SB 768

1. The final hearing on the merits must take place within 1 year from the date the temporary orders are entered. Tex. Fam. Code §263.401. That one year time period can be extended for up to an additional 180 days. However, it may take up to 36 days or longer for that year timeline to begin running. (See Example Scenario attached).
2. The purpose of the deadline is so that children will not languish in foster care. Older children remember and miss their parents, their home, their school. While waiting for trial they may be shifted from foster home to foster home for various reasons. This inhibits emotional and academic stability. Infants and toddlers may bond with foster parents and be traumatized not only by the removal, but by each change to a new foster home.
3. The proponents of the bill state that the bill is necessary to avoid losing federal dollars. QUESTION: Will the state lose the money if it fails to pass this bill OR only if it fails to try these cases in a timely manner.
4. The cost of one trial is extremely costly:
 - The Department may be represented by the Office of the Attorney General, but they are more often represented by the local District Attorney. Most offices send two attorneys to try these cases - at the expense of the taxpayer.
 - Each parent is entitled to representation. If the parent is indigent, then the court appoints and the taxpayers pay for a parent's attorney. If mom is the focus of the investigation, then it is not uncommon for there to be more than one dad involved.
 - The child has an attorney, appointed by the court and paid for by taxpayers. If the children have significantly different interests due to age or family structure for the non in common parent, then there may be more than one attorney ad litem or amicus attorney appointed and paid for by the taxpayers.

Now, DOUBLE those costs to the taxpayers.

If there are scheduling problems in some counties, the cost of bringing in a visiting judge is not likely to be as high as the cost of paying for two trials.

5. If a parent is not indigent, then he or she must obtain and pay for counsel. Termination cases have been referred to by the courts as the "death penalty" of civil cases and the Texas Supreme Court has ruled that parents are entitled to competent counsel. Most parents, even though not sufficiently destitute to qualify as indigent, cannot afford to pay for representation in one trial. Few could pay for the cost of two trials.

6. Parents are almost always required to have a job as part of their Service Plan. Few hold the type of jobs where they can miss enough days for one trial, let alone two.

7. EXTREMELY PROBLEMATIC/UNCONSTITUTIONAL

If the trial before the associate judge was a jury trial, then the parent cannot request that the trial before the elected judge be a jury trial. Tex. Fam. Code § 201.015 (f)

No judge wants to be the judge that makes the mistake of sending the child home to the wrong parent. Parents have a better chance of a politically free trial, in most instances, when the case is tried by a jury. Any party can tender for a jury. Once a jury request has been tendered, all parties must agree to waive the jury. So the state could tender for a jury and set the case in front of an associate judge to ultimately deprive the parent of a trial by jury conducted by the elected judge.

EXAMPLE SCENARIO :

1. The child may be removed without court order and held for five days before the department is required to take any action, in certain situations. Pleadings requesting immediate relief are filed on the Friday before Memorial Day. The hearing to determine whether a Temporary Restraining Order should be issued is set on the first working day, Tuesday after Memorial Day or later, if the judge is not available on that date. [At this point the child is out of the home for 8 or more days]. Tex. Fam. Code §262.113

2. The hearing on the Temporary Restraining Order must be set within 14 days. [The child is out of the home for 22 or more days]. Tex. Fam. Code §262.103.

4. The judge extends the Temporary Restraining Order for another 14 days. [The child is out of the home for 36 or more days - over one month before the Temporary Order is put in place.] Tex. R. Civ. Proc. 680.

5. On the 36 day after removal, the one year dismiss date begins to run. Tex. Fam. Code §262.113.

6. The merits hearing must commence on the Monday following the expiration of the one year time period. That can extend the case by up to 6 days. [Potentially, the child has been out of the house for 407 days or 1 year and 6 weeks] §263.401 (a).

7. The court can extend the one year time period by 180 days. [Potentially, the child has been out of the house for 587 days or 1 year, 7 months and 2 weeks or more.] Tex. Fam. Code §263.401 (b).