

- SUBJECT:** Reinstating parental rights after involuntary termination
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu
0 nays
- WITNESSES:** For — Lori Mellinger, Empowered Women of Purpose; Judy Powell, Parent Guidance Center; Julia Hatcher, Texas Association of Family Defense Attorneys; Sarah Crockett, Texas CASA; Meagan Corser, Texas Home School Coalition; Andrew Brown, Texas Public Policy Foundation; Melissa Baker and Cynthia Simons, Texas Women's Justice Coalition; Maggie Luna; Michele Nigliazzo; (*Registered, but did not testify*: Terra Tucker, Alliance for Safety and Justice; Alison Mohr Boleware, National Association of Social Workers - Texas Chapter; Lindy Borchardt, for Tarrant County Criminal District Attorney Sharen Wilson; Gabriella McDonald, Texas Appleseed; Brittney Taylor, TexProtects; Anais Biera Miracle, The Children's Shelter and Family Tapestry; Knox Kimberly, Upbring; Taran Champagne; Jimmy Vaughn; Cecilia Wood)

Against — None

On — (*Registered, but did not testify*: Carol Self, Department of Family and Protective Services)
- BACKGROUND:** Family Code sec. 161.003 authorizes the court to order termination of the parent-child relationship in a suit filed by the Department of Family and Protective Services if the court finds that:
- 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;
 - 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;

- 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;
- the department has made reasonable efforts to return the child to the parent; and
- the termination is in the best interest of the child.

It has been suggested that the reinstatement of parental rights, when appropriate, provides greater safety and stability to children and their families. There are concerns that Texas law does not sufficiently address the issue of reinstatement of parental rights to a former parent whose rights to a child have been involuntarily terminated.

DIGEST:

HB 2926 would establish conditions under which a petition for the reinstatement of parental rights could be filed following the involuntary termination of the parent-child relationship.

Petition for reinstatement. The bill would allow the following persons to file a petition requesting the court to reinstate the parental rights of a former parent whose parental rights were involuntarily terminated:

- the Department of Family and Protective Services (DFPS);
- the single source continuum contractor with responsibility for the child who was the subject of the petition;
- the attorney ad litem for the child; or
- the former parent whose parental rights had been involuntarily terminated.

A petition for the reinstatement of parental rights could be filed only if at least two years had passed since the issuance of the order terminating the former parent's parental rights and the child had not been adopted and was not the subject of a written adoption placement agreement. The petitioner would be required to provide notice, as defined by the bill, if the petitioner was the former parent who was seeking to have their parental rights

reinstated.

The contents of the petition for reinstatement of parental rights would have to be sworn by the petitioner and include:

- the petitioner's name;
- the name and current residence address of the former parent whose parental rights were sought to be reinstated, if that former parent was not the petitioner;
- the child's name, current residence address, and date and place of birth, if known;
- the name, residence address, and contact information, if known, of any party that participated in the original termination hearing and had information relevant to the determination of conservatorship of or possession of or access to the child;
- a summary of the grounds for termination of the former parent's parental rights;
- a summary statement of the facts and evidence that the petitioner believed demonstrated that the former parent had the capacity and willingness to perform parental duties;
- a statement by the former parent requesting the reinstatement of parental rights;
- a statement of the intent or willingness of the child to consent to the reinstatement of parental rights, if the child was 12 years of age or older; and
- a summary of all prior requests or motions for reinstatement by the former parent and by the petitioner, if the former parent was not the petitioner, with respect to the child.

Notification. Before a former parent whose parental rights had been involuntarily terminated could file a petition for reinstatement, the former parent would have to notify DFPS of their intent to file the petition at least 45 days before the petition was filed. The commissioner of DFPS would be required to create a form to be used by a former parent for that notice that included the information in the sworn petition for reinstatement. A copy of the notice would have to be filed with the petition.

The petition for reinstatement and notice of a hearing on the petition would have to be served on persons specified in the bill, including the child or the child's representative, the county attorney, the child's attorney ad litem, DFPS or a single source continuum contractor, and the former parent whose parent rights were sought to be reinstated, if that former parent was not the petitioner.

Reinstatement hearing. A reinstatement hearing would have to be held not later than the 60th day after the date the petition was filed. In the hearing the burden of proof would be on the petitioner, and each party could call witnesses.

The court could grant the petition and order reinstatement of the former parent's parental rights only if the court found by a preponderance of the evidence that:

- reinstatement of parental rights was in the child's best interests;
- at least two years had passed since issuance of the order terminating parental rights;
- the child had not been adopted and was not the subject of a written adoption placement agreement;
- if the child was 12 years of age or older, the child consented to the reinstatement and desired to reside with the parent;
- the former parent had remedied the conditions that were grounds for rendering the order terminating parental rights; and
- the former parent was willing and had the capability to perform parental duties, including maintaining the health, safety, and welfare of the child.

In determining whether to grant a petition for reinstatement of parental rights in regard to a child who was 11 years of age or younger on the date the petition was filed, the court would be required to consider the child's age, maturity and ability to express a preference. The court could consider the child's preference regarding the reinstatement as one factor, considered along with all other relevant factors, in making the determination.

Orders. Following a reinstatement hearing, the court could render an order granting the petition, denying the petition, or deferring the decision on the petition.

If the decision on reinstatement was deferred, the court would render a temporary order that expired after a period of six months, during which DFPS would remain the managing conservator of the child and the former parent was the possessory conservator. DFPS would be required to monitor the possessory conservatorship of the former parent during the period of the temporary order, and when the temporary order expired the court would be required to hold a hearing to determine whether to grant or deny the petition for reinstatement.

If the court rendered an order for reinstatement of parental rights, the court would be required to enter its findings in a written order stating that all legal rights, powers, privileges, immunities, duties, and obligations of the former parent regarding the child, including with respect to custody, care, control, and support, were reinstated.

If the former parent's petition for reinstatement was denied, the court would be required to render a written order that included the court's findings and detailed the reasons for the denial of the petition and a statement prohibiting the filing of a subsequent petition in regard to the former parent's parental rights before the first anniversary of the date the order of denial was issued.

The bill would take effect September 1, 2021.